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56TH CONGRESS, {  
2d Session. }

SENATE.

{ Doc. No. 231,  
Part 3. }

COMPILATION  
OF  
REPORTS  
OF  
COMMITTEE ON FOREIGN RELATIONS,  
UNITED STATES SENATE,  
1789-1901,  
First Congress, First Session, to Fifty-sixth Congress, Second Session.

CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST FOREIGN GOVERNMENTS—CLAIMS  
OF CITIZENS OF THE UNITED STATES AGAINST THE UNITED STATES—CLAIMS OF  
CITIZENS OF FOREIGN GOVERNMENTS AGAINST THE UNITED STATES—  
CLAIMS AGAINST THE UNITED STATES OF DIPLOMATIC AND  
CONSULAR OFFICERS OF THE UNITED STATES FOR  
REIMBURSEMENT AND EXTRA PAY.

VOL. III

WASHINGTON:  
GOVERNMENT PRINTING OFFICE.

1901.

128143

IN THE SENATE OF THE UNITED STATES,

*January 15, 1901.*

*Resolved*, That there be printed as a Senate document the Compilation of Reports of the Committee on Foreign Relations of the United States Senate from seventeen hundred and eighty-nine to nineteen hundred, prepared under the direction of the Committee on Foreign Relations, as authorized by the Act approved June sixth, nineteen hundred, entitled "An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred, and for prior years, and for other purposes."

Attest:

CHARLES G. BENNETT,

*Secretary.*

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REPORTS OF COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, 1789-1901, FIRST CONGRESS, FIRST SESSION, TO FIFTY-SIXTH CONGRESS, SECOND SESSION.

[See Claims against Venezuela, Gen. Index.]

FIFTY-FIRST CONGRESS, FIRST SESSION.

December 18, 1889.

[Senate Report No. 11.]

Mr. Evarts, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to which was referred the memorial of the Venezuela Steam Transportation Company, respectfully submit that it has had said matter under consideration and report the accompanying joint resolution (S. R. No. 28), which they recommend for adoption and passage by the Senate.

In support of the resolution, as reported by the committee, the committee report that the situation, as between the rights and claims of the petitioners and the duties of the Government of the United States to secure the satisfaction of these rights and claims from the Government of Venezuela, is entirely unchanged from the condition in which they stood when this committee reported a joint resolution identical with that now reported to the Senate and which passed the Senate during the last Congress.

The committee therefore present the views of this committee as set forth in its report to the Senate, in the last Congress, as exhibiting the present views and conclusions of the committee in support of the joint resolution now reported to the Senate, as follows:

The Committee on Foreign Relations, to which was referred Senate joint resolution No. 83 for the relief of the Venezuela Steam Transportation Company, respectfully reports that it has had said matter under consideration.

From the matters appearing in Senate Ex. Doc. No. 28, Forty-second Congress, second session, and Senate Ex. Doc. No. 143, Fiftieth Congress, first session, it appears to the committee that in the year 1871 the steamers of said Venezuela Steam Transportation Company, of New York, an American corporation composed of American citizens, viz, the steamers *Nutrias* and *San Fernando*, were unlawfully seized by or under the authority of persons exercising in part the powers of and claiming to be the Government of Venezuela, to the great damage of the said corporation, and in respect of which repeated demands have been made by the Executive upon the Government of Venezuela for indemnity and without avail.

In respect of the steamer *Hero*, another vessel owned by the same company, it appears from the papers contained in the executive documents referred to that she was seized by a body of forces claiming to be of the true Government, while lying near the custom-house, in Venezuela, of Guiana Vieja, while waiting for the customs authorities to come on board and go through with the necessary formalities, and was taken by said forces up a river for a distance of about 25 miles, and was afterwards, by the same power, with the officers and crew, imprisoned on board, taken up the river to Ciudad Bolivar; that when within about 10 miles of the last-named place she

was fired into by an armed steamer of the other party claiming to be under the true Government of Venezuela, in which encounter she was very much damaged, but, in some way, that does not clearly appear from the papers, she appears to have come into the possession of the so-called regular authorities of the Venezuelan Government, if, which is more than doubtful, any government was regular at that time, and finally returned to the steamship company in a greatly damaged condition.

Besides the two executive documents already referred to in this report, the committee has been furnished by the State Department with a mass of reports from the diplomatic and consular officers of the United States at Venezuela covering a period of time from October, 1867, to August, 1872, and thus embracing the whole period preceding and during which all the affairs relating to these vessels took place. From this correspondence it is evident that the contending parties, factions, and forces in Venezuela preceding and at the time of the events affecting all these vessels, were none of them legitimate in the sense of the constitution of Venezuela, but all were struggling with varying success for the practical possession of the government of the country, with little, if any, regard to its written constitution, and there seems to be just as good ground for taking the organization of the party of the "Blues," so called, as the legitimate government at that time, as the forces and managers of the party of the "Yellows." Under these circumstances it appears to the committee that the fact that the steamer *Hero* was seized by parties claimed to be in rebellion by the party with whom diplomatic communication was from time to time kept up by the representatives of the United States, furnishes no reason, if any such has ever been set up by Venezuela authorities, why the present Government of that country should not be responsible for it and the damages consequent thereon.

In respect of the other vessels mentioned in the papers, viz, the *Nutrias* and the *San Fernando*, there does not appear to be any possible ground of excuse on the part of the present Government of Venezuela for not making proper indemnification which that Government, as appears from the papers, has for a very long time, viz, from 1872 to this time, for whatever reason, neglected to make indemnity or any reparation.

The committee is of opinion that it is the manifest duty of the United States, under these circumstances, to take such measures as shall be adequate to obtain indemnity reparation for all wrongs and damages suffered by the said steamship company and its officers and crews (being citizens of the United States), in respect of all said vessels.

The committee accordingly report the accompanying joint resolution and recommend its passage.

The committee returns herewith to the Senate the memorial of the Venezuela Steam Transportation Company.

All of which is respectfully submitted.

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[See Claims against Mexico, Gen. Index.]

#### FIFTY-FIRST CONGRESS, FIRST SESSION.

December 18, 1889.

[Senate Report No. 12.]

Mr. Dolph, from the Committee on Foreign Relations, submitted the following report:

This bill was reported to the Senate, from the Committee on Foreign Relations, near the close of the Fiftieth Congress, and its passage was recommended. The report of the majority of the committee, and the views of the minority, accompanied by voluminous testimony, taken by the committee, under the order of the Senate, was printed. (Report No. 2705, Fiftieth Congress, second session.) To avoid the expense of reprinting said papers they are here referred to, and made a part of this report.

The committee report the bill (No. 374) without amendment, and recommend its passage.

[See Claims against Mexico, Gen. Index.]

**FIFTY-FIRST CONGRESS, FIRST SESSION.**

**December 19, 1889.**

[Senate Report No. 15, and Views of Minority.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred Senate bill No. 375, report the same back with amendment, and recommend its passage.

A bill similar in its provisions, and to secure the same objects, was sent to the committee in the first session of the Forty-ninth Congress, and on January 11, 1886, was reported favorably to the Senate. (Report No. 1316 to accompany Senate bill No. 2207.)

All the facts touching the history and the various proceedings had in relation to the claim of Benjamin Weil against Mexico were carefully examined by the committee, and were presented and discussed in that report at sufficient length to justify the conclusion of the committee that the claim had no foundation in fact, that it was entirely a simulated demand, and had been supported by corrupt testimony.

No new fact touching the integrity of the claim has been suggested or presented in its support.

Counsel for the present legal representative of the claimant, Benjamin Weil, argued the questions that he chose to raise before a sub-committee. That argument is submitted with this report as Appendix No. 1.

As the former report is a sufficiently full analysis and explanation of all the material facts and legal questions that have been thought to bear upon the subject to which this bill relates, and embraces a sufficient statement of the opinions of the committee, the same is appended to and made part of this report as Appendix No. 2.

The legal representative of the original claimant, Weil, and other persons claiming interests in the award to him by assignment, demanded the payment of their alleged respective interests in the award, by the Secretary of State, since the adjournment of the Forty-ninth Congress.

On the 5th day of March, 1888, the President, in reply to resolutions of the Senate, sent in a message, hereto appended as Appendix No. 3, which states the grounds upon which that demand was refused.

The committee concur with the views taken by the President in that message as to his powers and duties under the existing state of the law, as to making further payments to these claimants out of the funds in the custody of the Department of State paid by Mexico to the United States under the convention concluded July 4, 1868.

In the act of Congress approved June 18, 1878, in section 5, it is enacted as follows:

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing: Therefore, *Be it enacted*, That the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity, require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.

And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

The President is satisfied, as President Hayes and President Arthur were, that the honor of the United States and the principles of equity and justice require that the award made in the case of Benjamin Weil should be opened and the case retried, and that until this is done, "or until Congress shall otherwise direct," that it is his duty "to withhold the payment of said award."

In this act Congress made provision for the distribution and payments of all the awards that were made by the joint commission, except the awards to Benjamin Weil and La Abra Silver Mining Company. These were reserved to be disposed of by Congress through further legislation, unless the cases were opened and "retried and decided in such manner as the Governments of the United States and Mexico may agree."

This provision of law was construed by Mr. Arthur as making a resort to the treaty making power necessary, as the only proper method of making an agreement between the two Governments as to the opening of these awards and the retrial of the causes.

Accordingly, he negotiated a convention with Mexico in which such an agreement was provided for, which the Senate failed to ratify by the affirmative vote of two-thirds of that body.

Mr. Hayes, while Mr. Evarts was Secretary of State, contended that a treaty was not a proper method of reaching the result of a retrial of said awards; that it was purely a domestic question touching the honor and duty of the United States, and should be inquired into in some domestic tribunal empowered by law to investigate and decide the questions of fraud that the Mexican Government had presented. He stated that the executive branch of the Government had no means adequate to conduct such investigations or to open and retry the cases, and asked Congress to exert its plenary powers in providing a means of executing the act of June 18, 1878.

The failure of that negotiation, and the apparent want of power in any department of the Government to execute the will of Congress as expressed in that act, has, according to the decision of the President, announced in his message to this Congress, required him to withhold the payment of these awards to the claimants "until Congress shall otherwise direct."

The President concurs in the views taken by Mr. Arthur and Mr. Hayes, and is satisfied, also, that the honor of the United States requires that some tribunal should make an investigation of this claim and open and retry this case, with powers adequate to the final determination of this controversy, and he recommends the Court of Claims as a suitable tribunal to render such a judgment.

As Congress has not directed what shall be done with this money in the event of a failure of a negotiation with Mexico, but has expressly reserved the right to direct what shall be done with it in such a contingency, it is not entirely clear that the United States, in the absence of such directions, could bring suit in its own courts to have these questions determined.

The act of March 3, 1887, only empowers the head of an executive department to refer claims like this to the Court of Claims "with the

consent of the claimant." The State Department sought the consent of the claimants in this case to an investigation and decision of this case in the Court of Claims, which they declined.

If Mexico had the rights of any other suitor to go into our courts seeking a remedy against these claimants, the exercise of that right has been denied to that Government by our Government upon an application made for permission to bring such suit.

That period has, therefore, been reached when Congress must exercise its power to "otherwise provide" what shall be done with the money that Mexico has paid and will pay on this award to the United States.

The Department of State holds this money subject to such provision as Congress shall make for its disbursement, Mexico having paid to the United States punctually each installment as it falls due.

If Congress decides to pay this money to the claimants, contrary to the statement of three Presidents, in succession, that they were satisfied that the claim was fraudulent, further legislation is necessary requiring the payment to be made.

If Congress agrees with our Presidents that "the honor of the United States, the principles of public law, or considerations of justice and equity require that" this award "should be opened and the case retried," it is a very urgent duty that some provision of law should be made whereby this matter may be fairly and justly considered by a judicial tribunal and the controversy settled.

The recital in the act of June 15, 1878, is clear that this law was enacted in response to a request of Mexico for a rehearing of this award and of that made to La Abra Silver Mining Company. And while Mexico has no new right given by this statute, the following clause in the act fixes the disposition that is to be made of the money paid or to be paid by Mexico in respect of said awards in case of a retrial:

And in case of such retrial and decision any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be disposed of accordingly; and said present awards shall be set aside, modified, or affirmed as may be determined on such retrial.

This is such a disposition of the money, depending upon the event of a retrial of these cases, as must be respected until Congress shall direct that no retrial shall be had under the act of June 18, 1887.

It seems to the committee, upon a consideration of the facts as they are presented by the two Governments, and by the claimants, that it is not possible to dissent from the opinions of three Presidents who have examined these matters, and to hold that the United States should refuse to provide some means for the investigation and retrial of this case.

The point is made by the counsel for the claimants that negotiations having been entered upon with Mexico, which failed for want of ratification by the Senate, further inquiry is concluded, and the judgment of the Senate on the ratification of that convention is equivalent to a decision that neither the honor of the United States, nor the principles of public law, nor considerations of justice and equity require that this award should be opened.

Congress rightfully and necessarily took jurisdiction of the disposition that should be made of this award. The condition upon which was made to depend the opening of the award and the retrial of the case was, that the President should be of opinion that the honor of the country, etc., should require the opening and retrial of the award, after he had investigated the charges brought by Mexico. President Hayes

first performed this duty, and was followed by Presidents Arthur and Cleveland, each of whom, after investigation, decided that the facts existed upon which Congress had declared that the award should be reopened and the case retried, and also made it "lawful for him to withhold payment of said awards, or either of them, until such case or cases have been retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct."

Mr. Hayes declined to treat with Mexico, but announced his having reached the conclusion that the honor of the United States required the subject to be retried before a domestic tribunal. This declination on his part no more affected the provision made by Congress for a retrial of this case than did the subsequent refusal of the Senate to ratify the convention made with Mexico.

The President could now, as he might have done at any time, with the consent of the Senate, make a treaty with Mexico to set aside these awards, in virtue of authority derived directly from the Constitution.

If the rejection of the former treaty barred all further effort to do justice and equity and to protect the honor of the United States in this matter, so that Congress can not do these things, it would equally bar the constitutional power of the President to negotiate a treaty with Mexico for the like purposes.

Congress, as the supreme legislative tribunal of the Government, has the rightful jurisdiction over this subject, and has provided means for the investigation and decision of these questions of fraud, and has suspended the payment of these awards until the matter is decided in some satisfactory way.

It appears that further legislation is needed to complete what is only partially completed.

The committee recommend such legislation in the direction indicated in the message of the President, and reports this bill favorably, as amended, for that purpose.

[For appendixes to this report see Senate Report 1316, Forty-ninth Congress, first session, and Senate Report 1630, Fiftieth Congress, first session, Vol. I, pp. 474, 621.]

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## FIFTY-FIRST CONGRESS, FIRST SESSION.

June 19, 1890.

[Senate Report No. 1387.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

Your committee, to whom was referred joint resolution (S. 95) relative to certain bonds, drafts, and other papers in the Department of State, having fully considered the matter, respectfully report as follows:

During the sessions of the recent American and Mexican Mixed Commission, Louis S. Hargous, an American citizen, filed with it certain Mexican bonds and drafts and an open account against the Republic of Mexico, supposing that they were claims covered by the treaty under which that commission was created. The commission, however, thought otherwise and dismissed the cases for want of jurisdiction.

When the affairs of the commission were wound up the papers relating to the Hargous claims, instead of being returned to him, were sent to the Department of State, along with papers relating to the claims which the commission had decided on their merits.

The Hargous claims are now being presented by his administrator, Robert L. Hargous, against the Republic of Mexico, in one of the courts in the capital of that Republic, and that tribunal requires the production and surrender of the original papers in its adjudication of the claims.

In response to a communication from your committee in reference to the joint resolution, the Secretary of State says that he knows of no reason for retaining these bonds on the files of that Department.

Your committee recommend that the joint resolution do pass with an amendment designating the name of the claimant as well as the number of the cases before the mixed commission, in which the bonds and drafts were filed.

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[See p. 577, Vol. I.]

**FIFTY-SECOND CONGRESS, FIRST SESSION.**

**April 14, 1892.**

[Senate Miscellaneous Document No. 167.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following resolutions to accompany Confidential Report No. 1:

*Resolved by the Senate,* That after due reexamination of the matters presented in the petition of William Webster, and the evidence brought to their attention in support of his claim for indemnity from the British Government for lands in New Zealand, purchased by him in good faith from native chiefs, and duly conveyed to him before the Government of Great Britain acquired the sovereignty over that country by a treaty made with said chiefs, and after due examination of the refusal of the Government of Great Britain to entertain such claim, and of the allegations and principles upon which such refusal is based, the Senate of the United States consider that said claim for indemnity is founded in justice and deserves the cognizance and support of the Government of the United States. And that said claim, as a claim for money indemnity, was not presented by the United States to Great Britain prior to September, 1858.

*Resolved,* That the President is requested to take such measures as, in his opinion, may be proper to secure to William Webster a just settlement and final adjustment of his claim against Great Britain, growing out of the loss of the lands and other property in New Zealand, of which he has been deprived by the act or consent of the British Government, and to which he had acquired a title under purchases and deeds of conveyance from the native chiefs, prior to February 6, 1840, and prior to any right of Great Britain to said islands; and that the President is particularly requested, among other measures that may seem to him proper, to propose to the Government of Great Britain that the entire contention be submitted to arbitration to the end that a final and conclusive settlement thereof and of all questions involved may be thereby attained.

## FIFTY-SECOND CONGRESS, FIRST SESSION.

April 14, 1892.

[Senate Executive Report No. 1.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report upon the message from the President of the United States transmitting a report of the Secretary of State upon the claim of William Webster against the Government of Great Britain:

The Committee on Foreign Relations, to whom was referred the message from the President of the United States, transmitting a report from the Secretary of State upon the claim of William Webster against the Government of Great Britain, respectfully report:

The claim of William Webster, a native of Maine, and always a citizen of the United States, for reparation for the seizure and sale by the Government of Great Britain, acting through the colonial authorities of New Zealand, of large tracts of land in New Zealand, to which he had acquired the title, and of which he was in possession before the acquisition of that colony by such government in the year 1840, and for other wrongs, arises from a series of events that began more than fifty years ago.

The present situation of the controversy is the refusal of Great Britain, though requested by the United States, to entertain Mr. Webster's claim. This refusal is expressed in a communication from the foreign office to Mr. Lincoln, dated August 18, 1891.

During the long period in which Mr. Webster's rights have existed, they have been considered repeatedly and carefully by Congress. The justice of the claim has been invariably asserted in the reports that have been made upon it. In these conclusions the Department of State has concurred, and has submitted the claim to the Government of Great Britain with the untoward result above stated.

In the present aspect of the subject it is deemed proper to restate, more fully than has been done, the facts and events upon which rests the contention of the United States and the legal principles which sustain it. Though this case has been presented with great exactness and force in reports of Congressional committees and in papers by the Department of State, it will be well to express in one document the facts derived from these and other sources, to the end that they may be applied to the question in its present condition.

In the year 1835 Mr. Webster went to the island of New Zealand and engaged in shipbuilding and in the mercantile business. His trade with the natives was so prosperous that he realized large sums of money, acquired their confidence, and he had, by several transactions and deeds, purchased from different chiefs of the native tribes and from

the tribes sundry tracts of land, being about 500,000 acres in all. He expended for these lands in cash and merchandise and in substantial improvements thereon £15,672, somewhat more than \$78,000. These purchases were made between March, 1837, and some time in the year 1839. All the tracts are situated on the north or northeast coast of North Island, and some of them are near the city of Auckland. Their location is indicated on the annexed map by red boundaries and letters.

Up to the year 1840 no foreign government had acquired any territory or pretended to exercise any sovereignty over New Zealand. The island was under the dominion of the native tribes, and these were to a great extent confederated.

This confederation was entered into October 28, 1835, by a convention of chieftains who declared their independence under the name of the United Tribes of New Zealand, and also declared that within their territory all sovereign power and authority was vested exclusively in the hereditary chiefs and heads of tribes collectively, and that a congress should meet annually for the purpose of enacting laws. The immediate cause of this declaration was the proceedings of a Frenchman named de Thierry, who had arrived from Tahiti in August of the same year, and had issued a proclamation styling himself "Charles Baron de Thierry, sovereign chief of New Zealand."

The tenure of the soil was tribal. The boundaries of the territory of each tribe were definitely determined. The mode of transfer by which Mr. Webster obtained his titles was perfectly valid under the usages of the tribe in that respect, and the validity of estates, obtained as Mr. Webster obtained his, and indeed of a portion of the titles which thus inured to Mr. Webster, was repeatedly recognized by Great Britain after that Government had established its sovereignty over the islands. That power was indeed bound to so acknowledge them, not only upon settled principles of international law, but by the very terms of the treaty by which it acquired its sovereignty over New Zealand. Not only had no foreign government ever asserted or claimed any sovereignty over New Zealand, but Great Britain had repeatedly recognized it as an independent state long before that most conclusive act of recognition, the treaty of February 6, 1840, by which that power acquired by a national act of cession all of its sovereign and proprietary rights to New Zealand.

Lord John Russell, of the colonial office, expressed his opinion that "New Zealand was by solemn acts of Parliament and of the King recognized as a sovereign and independent state." (Memorandum sent to Lord Palmerston. Parliamentary papers, House of Commons, 1840, Vol. XXXIII).

In 1839 the Government of Great Britain appointed Capt. Hobson, R. N., as consul to New Zealand, and also commissioned him as lieutenant-governor. He received, under date of August 14 of that year, a letter of instructions from the Marquis of Normanby. That letter contained the following declaration:

I have already stated that we acknowledge New Zealand as a sovereign and independent state.

The Marquis of Normanby, in this letter of instructions to Consul Hobson, stated further that the Government concurred with a committee of the House of Commons (1836)—

In thinking that the increase of national wealth and power promised by the acquisition of New Zealand would be a most inadequate compensation for the injury which must be inflicted on the kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffen-

sive people, whose title to the soil and to the sovereignty of New Zealand is indisputable and has been solemnly recognized by the British Government.

It is not, however, to the mere recognition of the sovereignty of the Queen that your endeavors are to be confined, or your negotiations directed. It is further necessary that the chiefs should be induced, if possible, to contract with you as representing Her Majesty. Henceforward, no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain. \* \* \* You will, therefore, immediately upon your arrival, announce by a proclamation, addressed to all the Queen's subjects in New Zealand, that Her Majesty will not acknowledge as valid any titles to land which either has been or shall hereafter be acquired in that country which is not either derived from, or confirmed by, a grant to be made in Her Majesty's name or on her behalf.

\* \* \* \* \*

Extensive acquisitions of land have undoubtedly already been obtained, and it is probable that before your arrival a great addition will have been made to them. The embarrassments occasioned by such claims will demand your earliest and most careful attention.

If these instructions had been intended when issued to apply to titles of citizens or subjects of other states, acquired during that period in which Great Britain "acknowledged New Zealand as a sovereign and independent state," and in which that power declared as to the people of that island that their "title to the soil and sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government," they would rightfully have been denounced as without warrant even in the law of conquest, and would have been repelled by the resentment of every nation whose citizens should suffer by their enforcement. This, it is true, was the practical construction afterwards given to them in Mr. Webster's case by the colonial authorities; but at the time when they were issued, and by their very terms, it was intended that they should apply only to British subjects. It will be observed that the proclamation which this British consul, who had been empowered to treat with New Zealand as a sovereign power for annexation to Great Britain, was directed to issue, was to be addressed to the Queen's subjects only. The reasons for this limitation appear in the events which led that government to accredit Capt. Hobson as consul to New Zealand, with more than consular powers; powers which invested him with plenipotentiary authority to treat with a sovereign and independent state for the cession of its sovereignty and the transfer of its title to its soil.

Previously to the year 1839, Edward Gibbon Wakefield, by numerous publications upon the subject of colonization, had deeply impressed his projects and theories upon many of the best minds in England. His social standing was not good. He had been convicted of abduction and had served a term of imprisonment in Newgate. But he was a man of great mental force, capable of vast conceptions, and able to execute them. Under his inspiration a New Zealand association was formed in London in 1837. Its chairman was Francis Baring, and such men as Lord Durham, Sir William Molesworth, and several members of Parliament were of the committee. The object of the association was the settlement of New Zealand by emigrants, and the acquiring of lands in the islands for that purpose. This association failed in its efforts to procure a charter for colonization. Afterwards, and in June, 1838, Mr. Francis Baring obtained leave to bring in a bill to found a British colony in New Zealand, but it was thrown out. In 1839 Wakefield organized the New Zealand Company, of which Lord Durham was chairman. It had a paid-up capital of £100,000, and 100,000 acres of land in New Zealand were sold in London in advance of the departure of a single emigrant, or the acquirement of title to a single acre. The vendees drew lots for their allotments of land, the title to which the

company was afterwards to acquire. In April, 1839, the ship *Tory* was chartered by Wakefield to sail for New Zealand with emigrants. Lord Normanby, of the colonial office, refused to give letters of introduction to the governors of colonies, and declined to sanction in any manner any project to buy lands and to establish a government independent of the crown.

Fearing that the Government would not allow the *Tory* to sail, Wakefield started her secretly on her voyage under control of his brother, William Wakefield. The British Government thereupon proceeded to frustrate the project of the New Zealand Company. The measures it adopted were the appointment of Hobson as consul and lieutenant-governor, and the instructions from which the foregoing quotations have been made. The *Tory* arrived at New Zealand August 16, 1839, and before Mr. Hobson appeared, Edward Wakefield had obtained from the chiefs deeds which purported to convey to him in trust for the New Zealand Company a very large portion of North Island. As one of the missionaries expressed it, he bought "territory by degrees of latitude." On the 29th of January, 1840, Consul Hobson arrived at New Zealand. He found the anticipations of the engrossment of land expressed in his letter of instructions, which had doubtless been aroused by the sale in London of 100,000 acres and by the avowed object of the New Zealand Company, fully realized. Accordingly on the 30th day of January, 1840, he issued two proclamations which, by his letter of instructions, he had been directed to address to "all the Queen's subjects in New Zealand."

It is recited in the first one, that Her Majesty has been pleased to direct that measures shall be taken for the establishment of a settled form of civil government over those of Her Majesty's subjects who are already settled in New Zealand, or who may hereafter resort thereto, that Her Majesty has issued letters patent dated June 15, 1839, by which the former boundaries of the colony of New South Wales are extended to comprehend any part of New Zealand that is, or may be, acquired in sovereignty by Her Majesty; that William Hobson has been appointed to be lieutenant-governor over any territory which is, or may be, acquired in sovereignty to Her Majesty in New Zealand; and the proclamation is that—

I have this day opened and published the two commissions as aforesaid. \* \* \* And \* \* \* that I have this day entered upon the duties of my said office as lieutenant-governor aforesaid. And I do call on all Her Majesty's subjects to be aiding and assisting me in the execution thereof.

The other proclamation relates to the lands. It recites the instructions received by Mr. Hobson from the Marquis of Normanby, dated August 14, 1839, as commanding—

That it shall be notified to all Her Majesty's subjects settling in or resorting to the islands of New Zealand, that Her Majesty, taking into consideration the present as well as future interests of said subjects, and also the interests and rights of the chiefs and native tribes of the said islands, does not deem it expedient to recognize as valid any titles to land in New Zealand which are not derived from or confirmed by Her Majesty.

The proclamation is "to all Her Majesty's subjects," that Her Majesty—

Does not deem it expedient to recognize any titles to land in New Zealand which are not derived from or confirmed by Her Majesty as aforesaid. But, in order to dispel any apprehension that it may be intended to dispossess the owners of land acquired on equitable conditions, and not in extent or otherwise prejudicial to the present or prospective interests of the community, I do further hereby proclaim and declare that Her Majesty has been pleased to direct that a commission shall be ap-

pointed with certain powers, to be derived from the governor and legislative council of New South Wales, to inquire into and report on all claims to such lands, and that all persons having such claims will be required to prove the same before the said commission when appointed. And I do further proclaim and declare that all purchases of land which may be made from any of the chiefs or native tribes thereof, after the date of these presents, will be considered as absolutely null and void, and will not be confirmed or in any way recognized by Her Majesty.

It is to be observed that these proclamations had reference only to territory in New Zealand that, under the first proclamation, "is or may be acquired in sovereignty by Her Majesty." At the date of these proclamations no such sovereignty had ever been acquired. New Zealand was still, to use the expressions of the Marquis of Normanby and of Lord John Russell, "a sovereign and independent state," and recognized as such by Great Britain. The sovereignty that Mr. Hobson was to negotiate for was yet to be acquired. Until such cession was obtained the proclamations were inefficacious; and, if obtained by treaty, any provision in the antecedent proclamations inconsistent with the stipulations of the treaty would be thereby necessarily annulled. Accordingly the treaty of Waitangi was concluded on the 6th day of February, 1840. It recites that Her Majesty has empowered William Hobson, a captain in the royal navy, consul and lieutenant-governor over such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent chiefs of New Zealand to concur in certain articles and conditions. These are:

First. The chiefs of the confederation of the united tribes of New Zealand, and the separate and independent chiefs who have not become members of the confederation, cede to Her Majesty absolutely all the rights and powers of sovereignty which they respectively exercise or possess over their respective territories, as the sole sovereigns thereof.

Second. The Queen of England confirms and guarantees to the chiefs and tribes, and to the respective families and individuals thereof, the full, exclusive and undisturbed possession of all their lands and estates, forests, fisheries, and other properties, which they may collectively or individually possess, so long as it is their wish or desire to retain the same in their possession; but the chiefs of the united tribes and the individual chiefs yield to Her Majesty the exclusive right of preëmption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Third. In consideration thereof, Her Majesty extends to the natives of New Zealand her royal protection, and imparts to them all the rights and privileges of British subjects.

Shortly after the assumption by Great Britain of sovereignty over New Zealand the governor and legislative council of New South Wales, the jurisdiction of which colony had been extended to include New Zealand, passed, in 1840, an act empowering the governor of New South Wales to appoint commissioners to examine and report on claims to grants of land in New Zealand. This act in substance provided that all titles to lands in New Zealand which were not, or may not be hereafter, allowed by Her Majesty were and are absolutely void. This statute or ordinance was not long in force, and was repealed June 9, 1841, New Zealand having been separated from the government of New South Wales and erected into a colony by royal charter; whereupon, as part of the repealing act, the ordinance known as the New Zealand land-claimants' ordinance was adopted by New Zealand, by which it was ordained that all titles to land in that colony held or claimed by

virtue of purchases, conveyances, agreements, or other titles, either immediately or mediately from the chiefs or aborigines and native tribes, which may not have been, or may not be hereafter, allowed by Her Majesty shall be absolutely null and void.

The ordinance provides for a commission to hear, examine, and report on such claims to lands which have been acquired, and the extent and situation of the same; the prices paid for the lands, the time and manner of payment, and without taking into consideration the prices which may have been paid therefor by any subsequent purchaser. The commission was also directed to ascertain the number of acres which such payments would have been equivalent to according to the rates fixed in a certain schedule which were, as to purchases from January 1, 1837, to December 31, 1838, from 2s. to 4s. per acre, and from January 1, 1839, to December 31, 1839, were from 4s. to 8s. per acre. It was also provided that no grant shall be recommended by the commissioners which shall exceed in extent 2,500 acres, unless it is plainly authorized thereunto by the governor or the council; and it was further provided that nothing contained in the ordinance shall be held to oblige the governor to make or deliver any grants unless he shall deem it proper to do so.

Mr. Webster and other citizens of the United States, then resident in New Zealand, had previously become apprehensive that their estates would be attacked by the commission, which Mr. Hobson had stated in his proclamation would be appointed, and by the fact hereinbefore stated that an act had been passed in New South Wales providing for its appointment, stating its purpose to be "to examine and report on claims to grants of land in New Zealand." Mr. Webster, accordingly, on behalf of himself and his fellow citizens, on the 4th day of November, 1840, addressed a letter to Mr. Williams, the consul for the United States at Sydney, New South Wales.

He states in this letter that the British Government had taken possession of some parts of the islands; that proclamations had been issued that all titles to lands acquired from the native chiefs are to be sent to the office of the colonial secretary at Sydney; that he supposes they intend to allow whatever proportion of the land they may think proper, and asks to be informed what all Americans in the island are to do with the large quantity of land they had purchased. He presents a schedule of the lands purchased by him, and the amount paid in the premises, and requests the consul to make the facts known to the American Government as early as possible. He states that, to the best of his knowledge, about 1,000,000 acres of land had been purchased in the island by citizens of the United States, for which they had expended about 50,000 pounds sterling, besides several years' labor. He states that the British Government has not taken "any of my lands as yet, but I expect they will take all from me, and every other American, unless our Government will take it in hand and stop it. I trust you will make this known to the United States Government as early as possible, so that all Americans may know how to act in this case."

Consul Williams had not meanwhile been inattentive to the situation. It is stated in Rusden's History of New Zealand (vol. 1, p. 245, *et seq.*), a work of great completeness, and evidently written with access by the author to every source of information, official and otherwise, that—

When the American consul saw Gipps' New Zealand bill he inquired (June 11, 1840,) whether "it was expected that American citizens who may have acquired by purchase or otherwise lands or titles in New Zealand shall submit their titles to the proposed commission." The governor replied that he had sought instructions "as to the course to be pursued with reference to lands claimed by persons other than Brit-

ish subjects," and he regretted that he could in the mean time give no more definite answer.

When the laws of New South Wales were extended to New Zealand the consul (Williams) again asked Governor Gipps (June 22, 1840) whether the enactment was intended to "affect the commercial relations of the United States and New Zealand?" The governor replied that it "was not intended to alter in any way the commercial relations between any part of the territory comprised between the limits of this government and the United States, it being indeed incompetent for the legislature of any colony to pass laws affecting its relations with foreign powers. Sir G. Gipps deems it right, however, in making this communication, to add that New Zealand having been placed by Her Majesty under this government, the trade between it and all foreign countries will be governed, he presumes, by the laws which regulate the general trade of the Empire, although he has as yet received no communication from Her Majesty's Government on the subject."

The consul inferred that "all cases having reference to citizens of the United States residing at New Zealand, or resorting thither for the purposes of trade, will remain upon the same footing as in former years," and questions arising would be referred to England and America. The governor coincided as to reference of disputes, but, although "he could not pledge himself that the intercourse between citizens of the United States and the people of New Zealand shall remain exactly on the same footing as at present, he will endeavor (and especially with regard to the whale fishery and curing of whale oil) to obviate any cause of complaint as far as it be in his power to do so." The governor told Lord John Russell (July 23, 1840) that the question might affect the consul's countrymen as land claimants, whale fishers, and importers. There had hitherto been no customs duties or port charges in New Zealand. He proposed to postpone inquiries as to the titles of foreigners until he had disposed of claims of Her Majesty's subjects. \* \* \*

Lord John Russell consulted Lord Palmerston. He thought the rules with regard to titles ought "to be relaxed in favor of any aliens possessing lands in New Zealand by virtue of valid titles acquired previous to the proclamation of the Queen's sovereignty there." Lord Palmerston deemed the proposal "liberal, but just." Though such claimants could not reasonably object to be called upon to prove their titles, "yet, as in the case of a conquered colony, it would not be just to apply retrospectively to aliens who had become land-owners before the islands formed part of the dominions of the British crown the law which prevents aliens from acquiring landed property within those dominions."

The lieutenant-governor of New Zealand, nevertheless, by order dated February 9, 1841, directed all persons not subjects of Her Majesty who had purchased land from the aborigines previous to January 30, 1840, to forward a copy of their claims to the colonial secretary's office at Auckland, on or before June 1, 1841.

In the New Zealand Gazette of October 20, 1841, there was published another order of the governor in which it was stated—

For the information of foreigners claiming land in New Zealand by purchase from the natives prior to the proclamation issued by his excellency Sir George Gipps, bearing date the 14th day of January, 1840, that by a dispatch from the right honorable Her Majesty's principal secretary of state for the colonies, it is ordered that all claims, whether British or foreign, be investigated and disposed of by the commissioners appointed for that purpose.

The order continued as follows:

Such foreigners, therefore, as have not already forwarded the particulars of their claims to the Government are required to send them to this office without delay. These particulars should set forth the precise situation of the land claimed, its extent and boundaries, the names of the native sellers, and the consideration paid to them, and, in case of the claims being derivative, the names of the intermediate possessors of the land, and of the original purchaser, and the consideration given by him to the natives.

The attack on Mr. Webster's title having thus been made, and such title having been so slandered and flawed thereby in appearance as to make his estate valueless until cleared; his rights as a citizen of the United States having been thus denied in advance; no time having been allowed for his own Government to make representations in his behalf, notwithstanding the specious assurances of the authorities of Great Britain, Mr. Webster, to prevent an apparent and, in fact, a physi-

cally operative seizure and forfeiture of his estate, was compelled to make a special and restricted appearance before the commission, not to prove or to defend his title in that tribunal, but to insist that both he, as a citizen of the United States, and the land, as his property, were exempt from the summary and nonjudicial jurisdiction of the commission; in other words, that both the person and the subject-matter upon which the colonial authorities proposed to proceed were not, under the circumstances, subject to the jurisdiction of such a commission, so constituted and for such purposes, and that if such commission should undertake to proceed in its administrative inquisition upon his property this defense should have due consideration, and, if found true, should be allowed.

Accordingly he did, on the 20th day of July, 1841, send seven copies of his title papers to land and seven statements of purchases to the colonial secretary. But in so doing he stated that they be laid before the commission for examination only. He at the same stated:

I have sent all my claims to land in this country before the United States Government by the advice of the American consul of Sydney, and I trust his excellency Governor Hobson will not suffer any of my lands to be interfered with until the question is settled.

After stating this, he expresses his willingness to come forward and prove his purchases, but trusts that he shall be allowed time to do so, as he is busy with ships, and also urges that it will take a long time to get together all the natives and witnesses of his purchases, and that the expenses will be very great.

To this letter the colonial secretary replied, requiring Mr. Webster to distinctly state whether he claims the land as a British subject or as an American citizen. If as the former, his case will take the direction prescribed by law. If as the latter, "your claims must depend upon the decision which may be arrived at by the joint consent of both governments." He was also notified by this letter that "in seeking assistance from a foreign government he must relinquish all the rights of a British subject, such as the ownership of a British vessel, such as he is now understood to possess."

On October 11, 1841, Mr. Webster wrote as follows:

In reply to yours concerning my claims for land, I wish my claims to be laid before the commissioners, and am willing to take my chances with all the others, but I trust that they may be left until the last, for it will put me to great inconvenience to attend to them now.

The colonial secretary made, for the instruction of the governor, a memorandum that the information respecting these claims is sufficiently full to enable them to be referred for investigation, and on November 2, 1841, the governor directed:

Let Mr. Webster's claims be submitted the usual way.

The commission proceeded. It had before it fourteen of Mr. Webster's cases or claims, separately numbered and lettered, and they appear to have been separately passed upon. The aggregate of these claims was for 132,850 acres. These cases did not include all of Mr. Webster's claims, as he had previously informed the authorities. He had in all twenty-seven claims; but as to those which were not laid before the commission he stated that he had not had time to assemble and produce his witnesses, and he had asked for such time.

Upon these claims that were thus considered for 132,850 acres, the commission reported as to eight of them, for 120,850 acres, that Mr. Webster was a bona fide purchaser, and the report stated the amount of the consideration paid by him to have been cash and goods £1,167

10*s.* 12*d.*, or, in Sydney prices, about £3,427 6*s.* Four of the cases for 4,000 acres and two islands are stated in the report to have been withdrawn; but in this statement Mr. Webster has always insisted that the commission erred. The consideration alleged to have been paid for the lands involved in these four cases was £1,820. The commission found against Mr. Webster in only one case, involving 3,000 acres, consideration £450, upon the ground that he had "not purchased from the rightful owner."

It does not appear that this commission made any specific recommendation as to what action should be taken upon a report which so conclusively established such valuable rights in Mr. Webster to 120,850 acres of land. It is probable that none was made, and that Mr. Webster continued to insist upon confirmation of his grants from the natives, because we find that on December 18, 1843, the commissioners made an amended report recommending, in several of the cases which they had as above passed upon favorably to the extent of 107,250 acres, that the "allowances" be reduced to 7,281 acres. But this was not all. Having reduced Mr. Webster's allowed claims from 120,850 acres to 107,250 acres, and then further reduced them to 7,281 acres, the commission proceeded to further dismember Mr. Webster's rights by recommending that this 7,281 acres "be reduced in the aggregate to the maximum grant of 2,560 acres," in accordance with the land ordinance which prohibited a grant of greater extent. No grant ever issued for the 2,560 acres.

In 1844 a second commission was established, consisting of one person, Mr. Fitzgerald. In April of that year the governor laid before the council the foregoing amended award, and upon the advice of the council that the commission should be authorized to recommend an extension of the grant, all the awards were submitted to the second commission with instructions to extend the grant. Commissioner Fitzgerald did "most conscientiously recommend" that grants be issued to Mr. Webster himself in six of the cases for 5,000 acres, and in the other cases, to various other parties named for 12,655 acres; in all, for 17,655 acres. The reasons given by the commission for this "most conscientious" recommendation are, in substance, that Mr. Webster's outlay had been £7,787 13*s.*, with which, according to the valuation scale in the land-claims ordinance, he may be considered to have paid for 50,904 acres; that he had made considerable sales on the faith that all his valid purchases would be recognized by the Crown; that he would be ruined if not treated with great liberality; that he is one of the most enterprising settlers in the colony, having established a shipyard, several whaling stations, water mills, and other improvements.

It is stated that grants were made covering this award of 17,655 acres. The grantees were British subjects to whom he had contracted some of his lands or to whom he was indebted, and this award was really for their benefit. In fact, the entire award inured to the benefit of Mr. Webster's English obligees; for the 5,000 acres allowed to him was eventually vested in Mr. Ranulph Dacre, a British subject, and a creditor of Mr. Webster at the time of this award.

The affidavit of Mr. Dacre, made in London, in 1873, while Mr. Webster was in that city endeavoring to obtain reparation from the Government of Great Britain, imparts valuable information concerning the transactions under consideration. The following appears from this sworn statement:

The affiant was a merchant in Sydney, Australia, in 1835, and there became acquainted with Mr. Webster, when the latter went from Syd-

ney to New Zealand. Mr. Webster was largely engaged in the mercantile business when Great Britain extended its sovereignty over New Zealand. In the latter part of the year 1840, Mr. Webster came to Sydney and chartered a vessel, in which he purposed to ship spars and other commodities from New Zealand to England. Mr. Webster intended to go to England on this vessel, and thence to the United States to ask protection from his Government of his titles which had been affected by the proclamations issued the day after the arrival of Mr. Hobson in New Zealand, January 30, 1840. On the eve when the vessel sailed from Sydney, Mr. Webster was arrested at the suit of Abercrombie & Co., merchants of that city, and lodged in the debtors' prison, the cause of the arrest being in connection with New Zealand land titles and certain parties who had some land transactions with Mr. Webster.

The vessel sailed from New Zealand leaving Mr. Webster in prison, where he remained about seven weeks. He was released by the affiant procuring bail for him in the sum of £12,000, and he then returned to New Zealand. In 1844 affiant went to New Zealand to settle his accounts with Mr. Webster, and the result was that Mr. Webster conveyed to him 5,000 acres of land, being part of his purchases from the natives. This is evidently the 5,000 acres awarded to him under the "most conscientious" recommendation of Mr. Fitzgerald. The affiant held in his name, in and during the years 1841 and 1842, several British-built ships subject to the order of Mr. Webster.

The affidavit is suggestive of the fact that Peter Abercrombie was awarded by Mr. Fitzgerald, as claiming under Webster, 5,125 acres of land, and that the other grantees under that award are probably the "certain parties" mentioned in Mr. Dacre's affidavit who, with Abercrombie & Co., were the cause of Mr. Webster's arrest and imprisonment in Sydney, whereby he was prevented from going to the United States to claim the protection of his Government. This affidavit also explains the requirement of the authorities of New Zealand, that if he wished his claims to be considered before the commission as an American citizen, he must relinquish a certain supposed ownership in a British vessel.

Another circumstance indicates that the conduct of the colonial authorities towards Mr. Webster was governed by no principle whatever of settled law or of abstract justice. The Official Gazette of the New Zealand government for May, 1842, contained the following:

*Schedule of titles proved before commission.*

Number of claim.	Acreage.	Situation.
305.....	250	Coromandel Harbor.
305 A.....	600	Do.
305 B.....	1,500	On the river Thames.
305 C.....	2,500	Coromandel Harbor, Taupiri.
305 D.....	1,000	Coromandel Harbor, Waian.
305 E.....	*100,000	Great Barrier Island.
305 F.....	*300	Motutanpiri.
305 G.....	40,960	Point Rodney.
305 H.....	.....	We have not been able to trace this claim.
305 I.....	3,000	On the Nickiaranga Creek.
305 J.....	6,000	Big Mercury Island.
305 K.....	80,000	Left bank of the river Brako.
305 L.....	3,000	Wanaki, on the river Waihow.
306 M.....	2,000	Southeast side of the river Weahoko.

\* About.

These were Mr. Webster's claims. So that it was at one time officially announced that the "titles proved before commission" of Mr. Webster covered an aggregate of 241,450 acres.

While Mr. Webster's rights were being subjected to the practices herein exposed, the United States had requested the Government of Great Britain to take into consideration and to avert the evil consequences which it was feared would result to American citizens from the menacing attitude of its colonial authorities. No claim was made against Great Britain for any reparation. None could then be made, for when Mr. Webster made his representations to the American consul in 1840, and when that officer during the same year was intervening before Governor Gipps on behalf of citizens of the United States, the wrongs feared were merely in preparation for future perpetration; and, consequently, the representations made as hereinafter stated by the United States to Great Britain were merely of admonition and deprecation. In fact, as stated by Secretary Fish in a communication to the President dated July 13, 1876, no correspondence had ever taken place between the Department of State and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by Mr. Webster, but that in the years 1841 to 1844 certain correspondence was had between the legation in London and the foreign office of Great Britain in reference to the general question of land titles held in New Zealand by American citizens, but no correspondence had taken place in regard to the particular claim of Mr. Webster.

Mr. Williams, the consul at Sydney, in a communication to the State Department, dated February 23, 1841, sent the letter which had been written to him by Mr. Webster, and also the plan referred to in that letter.

On December 26, 1843, Mr. Everett, the American minister, addressed a communication to the Earl of Aberdeen, the secretary of state for foreign affairs, upon the general subject of the rights of American citizens, but not in respect to any particular case. Mr. Everett asserted the right and duty of the United States to protest against any measures by which injury is inflicted on those interests of their own citizens which had grown up in the prosecution of a commerce open to all nations. Any rights acquired by England in the assertion of her sovereignty over New Zealand must, of course, be qualified by any pre-existing rights of other civilized nations. Whatever may be the extent of rights acquired in uncivilized, independent countries, with the consent of their chiefs, it is well established that such rights are entitled to great consideration by any civilized government which may subsequently possess itself of the sovereignty of such countries. He protests that a regulation vacating at one blow all purchases of land made by citizens of the United States from the independent chieftains of New Zealand for less than five shillings sterling per acre would be unreasonable and oppressive.

He asserts that a cession of lands made by the chieftains to a citizen of the United States resorting to the islands for the pursuit of whales, or any other lawful purpose, even without any pecuniary consideration, ought to be fully entitled to respect, for the reason that it might be made from good will and from a desire to encourage the resort of industrious strangers, or it might be made in the consideration of establishing a factory or a shop. He expresses his confidence that, if it should appear that regulations have been established by the colonial

authorities bearing with undue hardship on the equitable interests acquired by American citizens before the assertion of British sovereignty, proper measures of redress and remedy will be directed to be taken. He asserts that no power would be permitted by England to establish an exclusive sovereignty over previously independent islands in the Pacific Ocean to proceed at pleasure to vacate purchases of land made by British subjects, or to interfere with other interests existing before such sovereignty was asserted.

Lord Aberdeen replied, under date of February 10, 1844, and informed Mr. Everett that—

As to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that when aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged, but that where a doubt arose whether the alien made a bona fide purchase the settler should be treated as any British subject and his claims disposed of accordingly.

It is too manifest to require argument that these instructions were violated by the colonial authorities in every instance in which they assumed to pass upon Mr. Webster's titles. That he was an alien, that he had purchased his lands before the proclamation of the Queen's sovereignty, was not denied. That he was a bona fide purchaser was equally manifest. He was so adjudged by the commissioners themselves. He was not deprived of his lands on any such grounds. He was evidently pursued, prosecuted, and eventually despoiled by a lawless and oppressive disregard of justice.

The grants recommended by Commissioner Fitzgerald in respect of Mr. Webster's titles were issued May 1, 1844. His creditors, the Sydney merchants who had prosecuted and imprisoned him, received 12,655 acres, and Mr. Dacre, another creditor, received a grant for the remaining 5,000 acres. The straits to which he was by that time reduced are disclosed by the following memorandum by Sir Robert Stout, made partly as a basis for a homily upon the alleged speculative character of Mr. Webster's dealings, but which, the facts being considered, might well serve as a text for very severe animadversions of a far different character:

Webster received his grants for 5,000 acres, and in less than four months had transferred the whole of these lands to his creditors, besides the 12,655 acres granted directly to them, leaving him without an acre of all his purchases, and still a debtor to the Sydney merchants.

Reduced even to this plight, Mr. Webster did not forego his efforts to establish his rights, particularly in regard to two claims which had not been passed upon by the commissioner. One of these was the Big Mercury Island, the other was a tract near the River Tairua, in the Bay of Plenty. Concerning these he addressed Commissioner Fitzgerald, March 8, 1845, and stated that these claims had been examined before Mr. Godfrey, who was one of the first commissioners, and that he had not heard of them since; that he bought the Mercury Island in 1838, and paid more than £300 for it; that he had ever since been in possession of it, and expended a good deal of money on it; the other tract was also purchased in 1838, for £400, and that he had since expended on it £400; that he had never heard of any dispute of the title, which he supposes the evidence taken by the commissioner will prove.

Upon this letter the governor made the following minute:

Very large grants having been made to Mr. Webster, no further grant can be made until the opinion of the secretary of state as to the former is made known. Direct Mr. Chipchase to communicate this reply to Mr. Webster, who is now in Auckland, but about to leave immediately.

The private secretary, Mr. Hamilton, addressed Mr. Webster, under date of March 10, 1845, as follows:

SIR: I am directed by the governor to inform you that his excellency has examined and taken advice respecting your land claims marked 305 H and 305 J, and is sorry to find himself precluded from authorizing any further grant to be made to you at present, on account of the largeness of those grants already made in your name.

P. S.—The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

At this time Mr. Webster was soliciting consideration of a claim for spars taken for the British navy by Commodore Wood, of Her Majesty's storeship *Tortoise*, from off the land claimed by him on the Bay of Plenty. The response made by the colonial governor to this demand was a promise to refer the case to the decision of the home government.

From this time Mr. Webster desisted from any attempt to obtain justice from the colonial government. He left New Zealand in 1847, and in 1858 applied to his own government for redress, the foundation for such application having been laid in 1843 by the letter from Mr. Everett to Lord Aberdeen, asserting the rights of all American citizens resident in New Zealand when Great Britain acquired its sovereignty.

But none the less did his estate continue to be the subject of consideration and partition by the colonial authorities among British subjects, who were obligees or vendees of Mr. Webster as to these identical titles. Rights, equities, estates in this property, grants or confirmations to which had been denied to him, although his abstract right had been acknowledged by two commissions and by the governor, were recognized to a limited extent in acreage, just sufficient, apparently, to satisfy or appease these obligees. His estate continued to be an unfailing source of supply for the satisfaction of these claims by and through the executive action of the colonial government. His obligees could not, of course, rightfully assert any claim to these lands, or to a part of any tract, except upon the basis that Mr. Webster was entitled to them.

Accordingly, under the land-claims settlement act of 1856, his estates underwent, for the above purposes, the operations of a third commission, and another dismemberment of his property was the result. Mr. F. D. Bell was sole commissioner and all of his proceedings were had several years after Mr. Webster had left the country. The act provided for setting aside all grants made under former ordinances, and required all claimants to have surveyed the exterior boundaries of their claims and to send in plans to the commissioner, together with their grants and all documents and deeds relating to alienations by original claimants. It prohibited the consideration of any case disallowed by any previous commission, or that had been withdrawn by the claimant.

The result of Mr. Bell's labors is well stated in the following extract from Senate Ex. Doc. 53, Fifty-second Congress, first session, pp. 11, 12:

Referring to the report of Mr. Bell, we find, in respect to the claims of Mr. Webster, the following result:

"In case No. 305, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 250 acres, this third commission, in 1861, granted to R. Dacre 57.5 acres and to H. Downing 57.5 acres, in all 115 acres.

"In case No. 305 A, in which the commissioners reported, in 1843, that Mr. Webster had purchased and paid for 250 acres, this third commission, in 1860, granted to G. Beeson 335 acres.

"In case No. 305 B, in which the commission reported, in 1843, that Mr. Webster had purchased in good faith and paid for 1,500 acres, this third commission ordered a grant to be issued to J. Solomon; but no grant was, in fact, issued.

"In case No. 305 C, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 800 acres, this third commission, on the 20th of November, 1847, granted to R. Dacre 284 acres, and on the 3d of May, 1860, to the same person, 384 acres, and on the 25th of January, 1861, to T. Keran, 59 acres; in all 727 acres.

"In case No. 305 G, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 10,000 acres, this third commission, at a time not known, granted to R. Dacre 1,944 acres, which is said to have been commuted for scrip.

"In case No. 305 I, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 3,000 acres, this third commission, on the 3d of July, 1860, granted to J. Solomon 885 acres.

"In case No. 305 J, in which the commissioners reported, in 1843, a bona fide purchase of a tract which Mr. Webster alleged to contain 6,000 acres, this third commission made no grant, and no grant was ever made.

"In case No. 305 K, in which the commissioners reported, in 1843, that Mr. Webster had purchased 80,000 acres, this third commission, on the 27th of November, 1878, granted to the heirs of Sir S. Donald 1,464 acres; to F. Whitaker, 12,855 acres and 2,141 acres, and for 294 acres September 30, 1878; total, 16,754 acres.

"In case No. 305 M, in which the commissioners, in 1843, reported that Mr. Webster had purchased in good faith, but only partly paid for 3,500 acres, no grant was ever made."

Every one of these grants, it may be observed, was made to some person or persons alleged to be derivative owners from Mr. Webster.

#### CONCLUSIONS.

From the foregoing it appears:

- (1) That the good faith of Mr. Webster in his land purchases is unquestionable.
- (2) That the validity of nearly all his important conveyances from the natives was recognized and admitted, and valuable consideration established.
- (3) That, in consequence of the annexation of New Zealand by Great Britain and of the land ordinances adopted and enforced, Mr. Webster was prohibited from selling or conveying or completing title to any of the lands which he had purchased and of which he was in quiet and undisputed possession at the time of the annexation.
- (4) That in certain of Mr. Webster's cases (305, 305 A, 305 C, 305 G, 305 I) the land commissioners found that 94,300 acres had been purchased by Mr. Webster in good faith, but recommended grants to him and his assigns of only 17,655 acres.
- (5) That in certain other cases (305 B, 305 J, and 305 M) it was shown that 11,000 acres had been purchased by Mr. Webster in good faith, but that no grant whatever was made.
- (6) That in certain other cases (305 D, 305 F, and 305 L) no awards were made, on the ground that the claims had been withdrawn, which Mr. Webster denies. And in this relation it is to be observed that the withdrawal of these claims is alleged to have been made before Commissioner Godfrey in May and June, 1844, after he had ceased to be a commissioner and had returned to England, and after the second commission, consisting of Mr. Fitz Gerald, had entered upon its duties.
- (7) That these proceedings, which were consummated in 1862 under the act of 1856, were in derogation of the principle conceded by Lord Aberdeen to Mr. Everett in 1844.
- (8) That they were in derogation of the same principle as announced by the governor to Mr. Webster a year later, in 1845.

Mr. Webster applied in 1858 to his own Government for redress. On June 14 of that year the Senate by resolution requested the President to cause to be prepared and presented in tabular form to the Senate a list of the names of all claimants, citizens of the United States, who have preferred complaints or claims against foreign governments to the Executive Department. This was a general request and did not specify Mr. Webster, or any other particular claim. In response

to this request the President sent to the Senate a statement called a "report" from the Secretary of State, in the following form:

*Message of the President of the United States, communicating, in answer to a resolution of the Senate requesting a list of claims of citizens of the United States against foreign governments, a report of the Secretary of State.*

*To the Senate of the United States :*

In compliance with the resolution of the Senate of the 14th June last, requesting a list of claims of citizens of the United States on foreign governments, I transmit a report from the Secretary of State, with the documents which accompanied it.

JAMES BUCHANAN.

WASHINGTON, January 19, 1859.

*Claim of William Webster.*

[Claims on Great Britain.]

Names of such complainants, citizens of United States, as have preferred complaints or claims against foreign governments to the Executive Departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action and the amount of satisfaction obtained, if any.
William Webster..	\$78, 145	For loss and damage (January, 1840) for so much paid, laid out, and expended, in cash and merchandise, between the years 1835 and 1840, in purchases of lands and franchises from certain chiefs of New Zealand, and in the improvement thereof, prior to January, 1840, when the sovereignty of Great Britain over the islands was declared; and, so the claimant alleges, his rights and privileges were sequestered by the British authorities. This statement of claim was received October, 1841, and, by instructions, was pressed upon the British Government, by the envoy of the United States, 1842 and 1843. It was not presented by the claimant to the London convention acting under the convention of February 8, 1853.	The Government of Great Britain, in reply to the representations of the envoy of the United States, stated that the colonial government of New Zealand was ordered in March, 1841, to recognize and confirm <i>all bona fide</i> purchases made from the New Zealanders by <i>aliens</i> prior to January, 1840, and, in case of want of proof of the good faith of the transactions, such <i>aliens</i> should be dealt with in like manner as British subjects making like claim; which orders and proceedings were recognized and adhered to by the British Government in 1844 in the case of a Belgian claimant. The before-mentioned order of 1841 confirmed to aliens <i>bona fide</i> purchases made by them prior to 1840, although made at prices less than <i>five shillings</i> sterling per acre, whilst British subjects were required to show payments at that rate in order to be entitled to confirmation of grants of land obtained by them from the natives prior to the proclamation of British sovereignty.
William Webster, by his counsel, Messrs. Anderson, Reverdy Johnson, and J. W. Denver.	\$6, 573, 750	For loss and damage and indemnity for lands purchased from chiefs of New Zealand from 1835 to 1840, and franchises pertaining thereto, and improvements alleged to have been made thereon, which claimant alleges were sequestered and taken from him by the British authorities after the assertion of the sovereignty of Great Britain over New Zealand in	

*Claim of William Webster—Continued.*

Names of such complainants, citizens of United States, as have preferred complaints or claims against foreign governments to the Executive Departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action and the amount of satisfaction obtained, if any.
William Webster, by his counsel, Messrs. Anderson, Reverdy Johnson, and J. W. Denver.		January, 1840. The intervention of the Executive of the United States was applied for September, 1858. The archives of the Government record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States, and to have been met by the measures of relief on the part of the British Government, noted in the statement here above next preceding. But the claimant now maintains that the order of the metropolitan Government of 1841 was only partially obeyed by the colonial authority, and that the relief apparently conceded by such partial obedience, has been made a nullity by the judgment of the colonial court; that no order of the British ministry can be of avail to contravene the fundamental law of Great Britain; that an alien can not take in fee and convey real estate in land by title good in law. Held under consideration.	

Concerning this document your committee have heretofore commented. (Report 1736, Forty-ninth Congress, second session.)

In a letter of Mr. Blaine, Secretary of State, to Mr. Webster, dated "Department of State, Washington, June 21, 1881," he says:

I may state generally, however, that upon a very thorough examination of the case recently made by an officer of the Department, charged with such duties, it is found that no claim was directly presented by you, or on your behalf, for indemnity, until September, 1858.

The entire letter is copied in Appendix 3 to this report.

These two statements are directly in opposition to each other. Without attempting to account for the apparent discrepancy, it is clear that the statement last made is true, because, in the nature of things, the statement made in 1859 could not be true. Mr. Everett did not present or urge any claim of Mr. Webster for indemnity for lands taken from him, nor did Lord Aberdeen make allusion to any claim for compensation. The question whether the lands would be taken from Webster was still open in December, 1843, and under the orders as announced to Mr. Everett by Lord Aberdeen, in February, 1843, the obstruction to a confirmation of Webster's title, of which Mr. Everett complained, had been removed, as to the price of 5s. per acre, as far back as March, 1841.

It is not true, as matter of fact, that Webster, in 1841, had presented

any claim for indemnity against the British Government, nor is it true that "the archives of this (the United States Government) record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States." This statement is not supported, but is refuted, by "the archives of the Government."

The injustice done Mr. Webster by this untrue representation of his conduct, whoever may have inflicted it, should be now removed. He should have a fair opportunity to have his claim against Great Britain considered on its merits, without the embarrassment of a false assertion that he had abandoned his right to these lands, and had claimed compensation for them in money, before the British authorities had proceeded to finally deny or to ignore his rights. By that report the Senate was misled as to the conduct and the rights of Mr. Webster, and it is due to him that this should appear on its records, and that this embarrassment should be removed.

Your committee have to remark further concerning this report, as to its erroneous statement that a claim had been presented by Mr. Webster against Great Britain, that it appears from the report itself that it refers to the representations made to Great Britain by Mr. Everett in 1843, hereinbefore considered. By a clerical misprision, \$78,145 was stated in this erroneous "report" as the amount claimed. No such claim was ever made. This sum was the amount of money stated by Mr. Webster to have been paid by him for and expended upon the lands in question. The compiler of this report assumed without any warrant that this sum was stated and advanced as a claim by this Government against Great Britain. This error, as we have shown, was corrected in 1876 by Secretary Fish. It was again corrected and the matter put in its true light by Mr. Blaine in a letter to Mr. Webster, dated June 21, 1881, in which the Secretary states:

DEPARTMENT OF STATE,  
*Washington, June 21, 1881.*

SIR: Your letter of the 16th of April last, in relation to your claim against the British Government growing out of the seizure and appropriation of your lands and other property in New Zealand by the British authorities in that colony during the years 1840 to 1844, has been received.

You desire information in relation to certain statements made in reference to your claim in a communication from the President to the Senate in January, 1859. It would be difficult, if not impossible, to answer your inquiries categorically at this distance of time from the date of that communication. I may state generally, however, that upon a very thorough examination of the case recently made by an officer of the Department charged with such duties, it is found that no claim was directly presented by you, or on your behalf, for indemnity until September, 1858. The general subject of the claims of American citizens to lands in New Zealand became a question of diplomatic negotiation between this Government and that of Great Britain about the time of the acquisition of that territory by the British Government, and it is believed that in making up the report of this Department to the President, upon which the message in question was based, either through inadvertance or misconception of your letter to Mr. Consul Williams—a copy of which that gentleman had forwarded to the Government—the officer charged with its preparation supposed that a claim on your behalf was then before the Department.

The investigations since made show that supposition to have been erroneous. No reason is perceived why that statement should in any way work a prejudice to your claim. It does not so operate in the estimation of this Government, and it is not conceived that it will have the effect of lessening the equities of the demand against that of Great Britain.

I am, sir, your obedient servant,

JAMES G. BLAINE.

WILLIAM WEBSTER, Esq.,  
*Washington, D. C.*

The foregoing observations are made because they bear upon the question whether Mr. Webster's claims have been barred, or have been

at all affected, by the two claims convention which were respectively proclaimed between the United States and Great Britain, February 8, 1853, and May 5, 1871.

It was agreed by the convention of 1853, article I, that—

All claims on the part of \* \* \* citizens of the United States upon the Government of Her Britannic Majesty, and all claims on the part of \* \* \* subjects of Her Britannic Majesty upon the Government of the United States which may have been presented to either Government for its interposition with the other since the signature of the treaty of peace \* \* \* on the 24th of December, 1814, and which remain unsettled, as well as any other such claims as may be presented within the time specified in article III, hereinafter, shall be referred to two commissioners, etc.

It was provided in article III that "every claim shall be presented to the commissioners within six months from the day of their first meeting," etc. By article V the contracting parties—

Engage to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before, the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

When the commission met, and when it adjourned, these claims had not reached a stage that brought them within the operation of the treaty. The claim for taking spars had never been presented by Mr. Webster to his own Government. It had been referred by the colonial government to the home office in London, and was under advisement there. As has been remarked, "it would be inequitable to hold that Great Britain could, by negotiating in London for its settlement, keep it out of the commission, and then set up the bar of the claims convention as an answer to the negotiations."

Be this as it may, there can be no doubt that the controversy as to the lands was never within the purview or operation of the treaty of 1853. Mr. Webster's grievance for taking the lands did not arise until they were finally taken from him, and until it was definitely settled that they would not be returned to him. It has been seen that as late as 1858 the question was under advisement by the colonial authorities, and the validity of one of the grants was recognized. The final determination not to return the property, and its final appropriation and sale by the colonial authorities, were not until after that year, and after the adjournment of the commission. Until the final denial of his claims, and of all remedy for his wrongs, he had no claim for money compensation, and had made none.

The convention of May, 1871, does not affect Mr. Webster's claims. It relates only to claims against Great Britain by citizen of the United States arising out of acts committed between April 13, 1861, and April 9, 1865.

In 1873 Mr. Webster proceeded to London and, through his counsel, Kimber & Ellis, made a statement of his case to the Earl of Kimberly, the principal secretary of state for the colonies, with a view to reparation by the British Government. To this it was replied that the information of the Government differed from the statements contained in the letter of Mr. Webster's counsel; promising, however, to forward a copy of such letter to the governor of the colony, with the request that the subject may be reported upon. To this Messrs. Kimber & Ellis responded, requesting to be advised in what respect the information above referred to differed from the statement made in their letter, to

the end that they might make explanations. To this it was answered that as the governor of New Zealand had been requested to report upon the matter, it was one for the consideration of the governor, and his lordship does not think there is any advantage in his entering into a discussion in regard to it.

On November 17, 1874, the colonial office addressed a letter to Mr. L. C. Duncan, who appeared in some way to have been brought into the business on behalf of Mr. Webster, stating that the report of the governor of New Zealand has been received, and that the matter having been most carefully inquired into, the only conclusion is that not only had Mr. Webster no claim to compensation, but that he had been treated throughout with exceptional liberality. A copy of this letter to Mr. Duncan was sent to Kimber & Co., Mr. Webster's representatives, by order of the Earl of Carnarvon, with the information that it must be distinctly understood that in furnishing the same his lordship adheres to the decision of his predecessor not to enter into any discussion of Mr. Webster's claim, but that it should be referred to the colonial governor, with whom the decision rests.

To this Kimber & Co. replied, requesting to be informed of the time when and the manner in which Mr. Webster was treated with "exceptional liberality," and the facts and reasons which caused the governor to arrive at the conclusion announced, and as to the time when Mr. Webster's rights were extinguished.

To this the Earl of Carnarvon directed a reply to be made, informing Mr. Webster's counsel that they had already been informed that Lord Carnarvon can not enter into any discussion of the merits of their client's case, and that he adheres to this decision.

The Senate, by resolution adopted February 28, 1887, requested the President to obtain from the British Government copies or full statements of all proceedings of the government of New Zealand or of any land commission or board or other lawful authority that has decided upon or has pending before it the validity of titles claimed by American citizens in the islands of New Zealand under grants made by the chiefs or other ruling powers prior to the exercise of sovereignty over them by the Government of Great Britain.

In compliance with this request the British foreign office, on December 7, 1887, transmitted to the American minister at London the information set out in Executive Document D, Fiftieth Congress, first session, hereto appended. With these papers was transmitted a memorandum on Mr. Webster's claim by Sir Robert Stout, in which the subject is reviewed and a reply undertaken to the report of your committee, No. 1736, Forty-ninth Congress, second session, hereto appended.

The Department of State, after careful examination of the question as thus presented, was unable to assent to the conclusions of Sir Robert Stout, on the ground that "the arguments and allegations, some of them injurious to the claimant, by which those conclusions are reached, are not justified by the facts as disclosed in the documents furnished by the governor."

Many reasons for this determination by the Department are set forth in Executive Document No. 23, Fifty-second Congress, first session, hereto appended.

With the conclusions of the Department your committee, after careful reëxamination of the subject, entirely agree.

The Department of State informed Mr. Lincoln, the American minister at London, in a communication dated September 9, 1890, of these

conclusions and expressed the hope "that a way may be found by friendly consultation between the two governments to afford Mr. Webster the fair and impartial disposition of his claims to which, it is thought, that he is entitled."

The Senate, had previously, by resolution of June 11, 1890, transmitted to the President, the papers in the case of Mr. Webster, with a statement that the Committee on Foreign Relations respectfully recommend the matter to his attention as a claim that is worthy of consideration, and with the request that it be made the subject of further negotiation with Great Britain.

Mr. Lincoln, the American minister at London, on October 11, 1890, addressed the Marquis of Salisbury, stating his instructions to acquaint the British Government with the fact that the United States had made the matter the subject of careful examination, and expressing the hope that a way may be found, by friendly consultation between the two governments, to afford Mr. Webster the relief to which it is believed he is entitled.

Answer to this communication was made January 6, 1891, stating that the papers and circumstances in the case have been most carefully examined, with an unfavorable result to the claim; stating also that it is clearly shown that Mr. Webster in the first instance, when bringing his case before the commissioner under the colonial ordinance of 1856, waived his right to be treated as an alien, and so was debarred from receiving beyond what was awarded him by those commissioners, and that under the circumstances Her Majesty's Government regret that they are unable to reopen the case, or entertain Mr. Webster's claim for further compensation.

The Department of State on June 3, 1891, informed Mr. Lincoln that it had been the understanding of that Department that Mr. Webster was in reality deprived of his lands and claims to lands by the commissioners under the colonial land-claim act of 1856, and that there seems to be an incorrect appreciation of the facts when the Government of Great Britain states in its note that it is clearly shown that Mr. Webster, in the first instance, when bringing his case before the land commission, under the colonial act of 1856, waived his right to be treated as an alien, and so debarred himself of the right to be awarded anything beyond what was awarded him by that commission, and that an examination of the evidence shows that he never brought his claim before the commissioners under the colonial act of 1856, and that he was then in the United States and presenting his claim before this Government, and had been at this time nearly ten years absent from New Zealand.

Mr. Lincoln submitted these considerations to Lord Salisbury. The response of the British foreign office was under date of August 18, 1891, that it appears on further examination of the case that in the note of that office of the 16th of January last a mistake was inadvertently made in the reference to the colonial land claim act of 1856, and that it was in the year 1841, and by the commissioners under the colonial act of that year, that Mr. Webster submitted his case, having previously received full notice from the governor that if he adopted this course he must be held as a British subject. It is also stated that it does not appear to Her Majesty's Government that this mistake materially affects the question at issue; that Mr. Webster, having voluntarily accepted the conditions imposed upon him, Her Majesty's Government are unable to admit that he could at any time afterwards bring

in a claim as an American citizen under the principle conceded Mr. Everett by Lord Aberdeen in his note of the 10th of February, 1844.

The refusal of the Government of Great Britain to entertain these claims is distinctly put upon the ground that Mr. Webster by appearing before the commission waived his right to be treated as an alien, and so debarred himself of the right to be accorded anything beyond what was awarded him by that commission, and that having voluntarily, as it is alleged, accepted the conditions imposed upon him by Governor Hobson in 1841, and having, as it is alleged, submitted his claim as a British subject under the colonial ordinance of that year, Her Majesty's Government are unable to admit that he could at any time bring in a fresh claim as an American citizen, upon the principle conceded by Lord Aberdeen in his note to Mr. Everett, dated the 10th of February 1844.

The facts under consideration do not, in the opinion of your committee, warrant this conclusion. It fully appears that on the 4th day of November, 1840, under apprehensions that the colonial government would proceed against his estates to his detriment, Mr. Webster addressed a letter to Mr. Williams, the consul for the United States at Sydney, stating, on behalf of himself and his fellow-citizens in like situation, his apprehensions; that he supposed the authorities intend to allow whatever proportion of the land they may think proper, asked advice as to what the Americans on the island were to do with the large quantities of land they had purchased, presented a schedule of his property, and requested the consul to make the facts known to the American Government as early as possible.

It also appears that while the confiscatory statutes or ordinances were in contemplation, and immediately upon enactment of the first one by New South Wales, the American consul at Sydney inquired of Governor Gipps whether it was expected that American citizens who may have acquired by purchase or otherwise lands and titles in New Zealand shall submit their titles to the proposed commission, and the governor replied as to this that he had sought instructions as to the course to be pursued in reference to the lands claimed by persons other than British subjects, and stating that he could in the meantime give no more definite information; that he proposed to postpone the inquiry as to the claims of foreigners until he had disposed of the claims of Her Majesty's subjects. Lord John Russell had stated to Lord Palmerston upon this same matter that he thought the rules relating to titles ought to be relaxed in favor of aliens possessing lands in New Zealand by virtue of valid titles obtained previous to the acquiring of Her Majesty's sovereignty there, and that Lord Palmerton deemed the proposal "liberal but just," and that, though such claimants can not reasonably object to be called upon to prove their titles, yet, as in the case of a conquered colony, it would not be just to apply retrospectively to aliens who had become landed owners before the island formed part of the dominions of the British Crown the laws which prevent aliens from acquiring landed property within those dominions.

The American consul transmitted Mr. Webster's letter to his Government, and in consequence thereof, Mr. Everett, the American minister at London, in 1843, made the representations to the Government of Great Britain on behalf of American citizens generally, resident in New Zealand, which we have hereinbefore fully set forth, and distinctly protested against any measures by which injuries should be inflicted on those interests of American citizens acquired in the progress of a commerce which had grown up and had been open to all nations; particu-

larly protested against a regulation vacating at one blow purchases of all lands made by citizens of the United States, as unreasonable and oppressive; asserted that such cessions made by the chieftains to a citizen of the United States ought to be fully entitled to respect, and expressed confidence that if it should appear that such regulations had been established by the colonial authorities bearing with undue hardship upon the equitable interests of American citizens before the assertion of English sovereignty, proper measures of redress will be directed to be taken.

To this Lord Aberdeen replied, February 10, 1844, that as to the rights and obligations of aliens in New Zealand, instructions had been forwarded in the month of March, 1841, to the governor of the colony, directing him to bear in mind the principle that when aliens had acquired lands from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged; but that where a doubt arose whether the alien made a bona fide purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly.

This was a distinct notification of the purpose and policy of the Government of Great Britain, upon which the United States and its citizens had a right to reply. In Mr. Webster's case this assurance was flagitiously violated by the colonial authorities, and the British Government, in the note addressed to Mr. Lincoln by which it refuses to consider Mr. Webster's claim, has ratified this violation of its own instructions.

As to the claims of Mr. Webster, which successive commissions found to have been bona fide, the colonial authorities were expressly required by the instructions which Lord Aberdeen informed Mr. Everett had been sent to the governor of New Zealand in March, 1841, to acknowledge them.

The colonial authorities in the executive inquiries by which the claims of Mr. Webster, confessedly bona fide, were first acknowledged and then were reduced, and then again reduced, proceeded in distinct violation of these instructions, and a breach of the assurances given by the Government of Great Britain to the United States.

As to the narrower contention by the Government of Great Britain, and upon which it rests its refusal to consider these claims, that Mr. Webster submitted them to the commission as a British subject, and is therefore bound by its decisions, it has no support in the recorded facts.

For sufficient reasons, which we have hereinbefore stated, Mr. Webster submitted a portion only of his claims to the commission, and stated that he submitted these for "examination only," at the same time stating that he had put all his claims to land in that country before the United States Government, by the advice of the American consul at Sydney, and expressed the wish that the colonial authorities would not allow any of his lands to be interfered with until the question should be settled. Subject to this defense, and insisting that his case in all of its subordinate aspects should be controlled by it, he expressed his willingness to come forward and prove his purchases. The greater portion of his claims were never in any manner submitted to the commission, and as to the few that were submitted the colonial authorities assert that four of them were withdrawn.

The response of the colonial authorities to this distinct claim of American citizenship and of rights thereunder, was so coercive, disingenuous, menacing, and oppressive, as to constitute practically duress

of property. It required Mr. Webster to state distinctly whether he claimed the lands as a British subject or an American citizen. This he had already done, and had stated that he claimed them as an American citizen, and that he had put all his claims to lands in New Zealand before the United States Government. The response goes on to state that if he claimed as an American citizen, his claim must depend upon the decision arrived at by the joint consent of both governments, thus informing him, as Governor Gipps had previously informed the United States consul at Sydney, that Mr. Webster's claims should be considered as an international matter between his government and the government that was threatening to proceed against him. In his reply, October 11, 1841, to this communication, Mr. Webster did not in the least qualify the claim of citizenship advanced by his previous letter, by "distinctly" or at all, stating that he desired to claim as a British subject, although he had been required to so "distinctly state" if he desired to so claim. He thus clearly continued, and reaffirmed, and left in force his previous assertion of rights as an American citizen. He thus kept himself within the protection of all his rights as an American citizen, not only those which he was entitled to under general principles of international law, but those which were conceded to all American citizens in like case by the letter which Lord Aberdeen had addressed to Mr. Everett; so that, in proceeding against Mr. Webster's estates, all the commissions proceeded subject to this defense and assertion of right, and they proceeded against him as an American citizen.

Having done this he could not, while retaining his actual citizenship, take away from his government its rights, or lessen its duty, to resist a decree that was no less than a national injustice inflicted upon an American citizen. The pretension could not be justified, nor could any conduct of Mr. Webster condone a measure so arbitrary and in principle utterly indefensible.

Nor was the claim of William Webster to his lands in New Zealand, which was perfected by conveyances from the owners of the soil, made to him before the Government of Great Britain had acquired sovereignty over those islands, forfeited, nor did he forfeit his rights as an American citizen, by demanding from that government, in any form, or in any tribunal, their recognition and full and just protection. To all that he was entitled as an American citizen he continued to be and now is entitled, and he had no need to be made a subject of the Queen of Great Britain in order to enjoy rights conceded to him by that government.

It was possibly unobjectionable in the colonial authorities to require all denizens of the island to bring forward their claims and designate their boundaries; this might be a proper regulation in the institution of a new government for the administration of its lands. But when the commissioners went beyond this purpose, and proceeded to forfeit and escheat titles and estates, many of which they conceded to be bona fide, they exceeded their jurisdiction, not only upon general principles of law, but also under the limitations prescribed by their instructions.

Mr. Webster, as a denizen of the islands at and before the treaty concluded at Waitangi, February 6, 1840, was entitled to its benefits. By this treaty Great Britain confirmed and guaranteed to the chiefs and tribes and to the respective families and individuals thereof the exclusive and undisturbed possession of all their lands and estates, which they may collectively or individually possess so long as they may desire to retain the same.

Under the provisions of the treaty, the Government of Great Britain

had no right to forfeit the lands thus guaranteed to the chiefs and tribes, nor had it the right to forfeit the title of any of their grantees.

Concerning this treaty, and its violation in this respect, your committee have heretofore observed:

It would be difficult to select language that would more clearly import a perfect ownership in all the soil of New Zealand, in the chiefs, the people as tribes, and as private owners, than that which is guaranteed in the treaty itself. Such a title, afterwards acquired by any person in Great Britain, in lands to which he had no title at the time he had previously attempted to convey the land to another, would, by relation and estoppel, accrue to such grantee the moment that he got such a deed, or a treaty had granted the title to him. These chiefs had conveyed these lands to Mr. Webster before the date of the treaty. As no exception is made in the treaty of the rights of the persons to whom these prior conveyances had been made, their titles are necessarily confirmed by its terms, unless they were obtained by fraud. So that Mr. Webster, if he had no other claim to the land, would be entitled, under the laws of England, to the benefit of the express grant in this treaty, made to the chiefs from whom he had purchased and who had previously conveyed the land to him.

But his titles were of equal dignity with that afterwards acquired by Great Britain, as it relates to the sovereign power from which they are derived. They are of equal validity and force with the title of Great Britain, as it relates to the fact of the prior ownership of the lands by the chiefs and tribes. They are of equal integrity, as it relates to the consideration paid for these lands, and of as much greater moral value, as a voluntary contract stands above one made under coercion, in the estimation of all civilized people.

Mr. Webster's title came first, in point of time, from the same sovereign power that Great Britain expressly recognizes in this treaty, and it was purchased for value from people whom he had been at great expense and labor to benefit, and who, even in their savage state, appreciated and were grateful for his kindness.

This treaty was preceded by British royal proclamations, prepared and issued just before the treaty was signed. It was under these proclamations that the rights of William Webster and other American citizens in New Zealand were afterwards stricken down.

The result has been that all of Mr. Webster's estate except 17,655 acres, which we have shown the British Government allowed and granted to his creditors and obligees or for their benefit, has been absorbed into the colonial domain, and sold as public property.

The history of this case, all of its particulars being considered, presents such repeated instances of injustice, and of delay and denial of justice by the final action of the Government of Great Britain refusing even to consider Mr. Webster's claim for reparation, as to warrant the further interposition of the United States. The case is such a one as would, if necessary, after all other methods of redress had been exhausted, justify special reprisals. Upon this the leading publicists are in agreement.

An injury committed upon one of his subjects, for which justice has been plainly denied, or unreasonably delayed, warrants a sovereign in issuing letters of marque or reprisal. (3 Phillimore, *International Law*, ed. 1857, p. 13.)

International justice may be denied in several ways: (1) by the refusal of a nation either to entertain the complaint at all or to allow the right to be established before its tribunals; or (2) by studied delays and impediments for which no good reason could be given and which are equivalent to a refusal, or (3) by an evidently unjust and partial decision. (*Law of Nations*, by Sir Travers Twiss, Part I, p. 36.)

To render legitimate the use of reprisals it is not at all necessary that the ruler against whom this remedy is to be employed, nor his subjects, should have used violence or made any seizure or any other irregular attempt upon the property of the other nation or its subjects; it is enough that he has denied justice. (Valin.)

It may happen that a nation, disregarding those moral obligations which bind states and individuals alike, unlawfully seizes the property of another, refuses to pay an admitted debt, suspends without reason the performance of a conventional engagement, procrastinates reparation for an evident injury or denies manifest justice or an equitable indemnity for losses caused by its own fault, in cases in which its own responsibility is directly engaged. In all these cases, after having exhausted

all the means of conciliation to the end that justice may be done, the offended and injured nation has the incontestable right, before appealing to arms, to resort to measures of enforcement, more or less rigorous, more or less extensive, generally defined under the name of reprisals. (1 Calvo, Droit Intern., sec. 675.)

In expressing these considerations respecting the right of special reprisals your committee do not desire to be understood as advising such action. The most important function at the present day of this principle of international law is its force as an argument in support of a proposition for arbitration in such cases as this, and it is solely with that view, at present, that your committee has alluded to it.

Your committee recommend the adoption of the following resolutions:

*Resolved by the Senate,* That after due reëxamination of the matters presented in the petition of William Webster, and the evidence brought to their attention in support of his claim for indemnity from the British Government for lands in New Zealand, purchased by him in good faith from native chiefs, and duly conveyed to him before the Government of Great Britain acquired the sovereignty over that country by a treaty made with said chiefs, and after due examination of the refusal of the Government of Great Britain to entertain such claim, and of the allegations and principles upon which such refusal is based, the Senate of the United States consider that said claim for indemnity is founded in justice and deserves the cognizance and support of the Government of the United States. And that said claim, as a claim for money indemnity, was not presented by the United States to Great Britain prior to September, 1858.

*Resolved,* That the President is requested to take such measures as, in his opinion, may be proper to secure to William Webster a just settlement and final adjustment of his claim against Great Britain, growing out of the loss of the lands and other property in New Zealand, of which he has been deprived by the act or consent of the British Government, and to which he had acquired a title under purchases and deeds of conveyance from the native chiefs, prior to February 6, 1840, and prior to any right of Great Britain to said islands; and that the President is particularly requested, among other measures that may seem to him proper, to propose to the Government of Great Britain that the entire contention be submitted to arbitration to the end that a final and conclusive settlement thereof and of all questions involved may be thereby attained.

## Senate Ex. Doc. No. 23, Fifty-second Congress, first session.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A REPORT OF THE SECRETARY OF STATE UPON THE CLAIM OF WILLIAM WEBSTER AGAINST THE GOVERNMENT OF GREAT BRITAIN.

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JANUARY 26, 1892.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

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*To the Senate of the United States:*

Referring to a communication of June 11, 1890, concerning the adoption by the Committee on Foreign Relations of a resolution respecting the claim of William Webster against the Government of Great Britain, I herewith transmit a report of the Secretary of State, with accompanying documents, showing the action taken under that resolution.

BENJ. HARRISON.

EXECUTIVE MANSION,  
Washington, January 25, 1892.

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The PRESIDENT:

On the 11th of June, 1890, the Senate Committee on Foreign Relations advised you of its adoption of the following resolution:

*Resolved*, That the papers in the case of William Webster be transmitted to the President with the statement that the committee respectfully recommend this matter to his attention, with the accompanying papers, as a claim that is worthy of consideration, and with the request that it be made the subject of further negotiation with the Government of Great Britain.

I have the honor to report that by your direction Mr. Lincoln was instructed September 2, 1890, to again present this claim to Her Britannic Majesty's Government. A copy of the instruction and of the subsequent correspondence which has taken place between the two governments with respect to this claim is herewith inclosed, with the suggestion that it be transmitted to the Senate Committee on Foreign Relations for its information.

Respectfully submitted.

JAMES G. BLAINE.

DEPARTMENT OF STATE,  
Washington, January 18, 1892.

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LIST OF PAPERS TRANSMITTED.

To Mr. Lincoln, No. 350, of September 2, 1890, together with printed memorandum of claim.

From Mr. Lincoln, No. 387, of January 17, 1891.

To Mr. Lincoln, No. 528, of June 3, 1891.

From Mr. Lincoln, No. 515, of August 19, 1891.

No. 350.]

DEPARTMENT OF STATE,  
*Washington, September 2, 1890.*

SIR: With his dispatch No. 638, of December 10, 1887, Mr. Phelps inclosed to the Department triplicate printed copies of a memorandum of Sir Robert Stout, governor of New Zealand, on the subject of the claims of Mr. William Webster, a citizen of the United States, to lands in that colony. In that memorandum Sir Robert Stout reviews the history of the claims and makes an extended reply to a report of the Committee on Foreign Relations of the Senate of the United States who have for some time had the subject under consideration. The committee were furnished with a copy of that reply and gave it careful consideration. The result of that consideration is that on the 11th of June last the chairman of the committee, by their direction, advised the President of the adoption by the committee of the following resolution:

*Resolved, That the papers in the case of William Webster be transmitted to the President with the statement that the committee respectfully recommend this matter to his attention with the accompanying papers as a claim that is worthy of consideration, and with the request that it be made the subject of further negotiation with the Government of Great Britain.*

The Department has made the matter the subject of careful examination with a desire to arrive at a just determination and finds itself unable to accept the conclusions stated in Sir Robert Stout's memorandum. The reasons why it is unable to accept those conclusions are set forth in a memorandum which accompanies this instruction and of which you are directed to furnish copies for the consideration of Her Britannic Majesty's Government.

It is believed that Her Majesty's Government, upon a perusal of this document, will find that the conclusions stated in the memorandum of the governor of New Zealand, and the arguments and allegations, some of them injurious to the claimant, by which those conclusions are reached, are not justified by the facts as disclosed in the documents furnished by the governor.

It is hoped that a way may be found, by friendly consultation between the two Governments, to afford Mr. Webster the fair and impartial disposition of his claims to which it is thought that he is entitled.

I am, etc.,

WILLIAM F. WHARTON,  
*Acting Secretary.*

ROBERT T. LINCOLN, Esq.,  
*London.*

#### CLAIM OF WILLIAM WEBSTER AGAINST GREAT BRITAIN.

##### ORIGIN OF MR. WEBSTER'S CLAIMS.

William Webster, when quite a young man, went to New Zealand with a capital of \$6,000 invested in general merchandise suited to trade with the native population. Being of an enterprising disposition, he rapidly extended the scope of his business. He learned the language of the people, cultivated friendly relations and traded with them. He purchased lands and established trading stations, not only for the sale of merchandise, but also for the sale of timber and other products of the lands which he had purchased. He was one of the pioneers of civilization in that country. He had no connection with the Government of the United States other than that of citizenship, and nothing to rely upon but his own energy and resources and such assistance as he could privately obtain. From 1835 to 1840 Mr. Webster had, as he states, invested in lands in New Zealand, in the form of cash and of merchandise, about \$78,000, and had acquired by deed from the native chiefs in all about 500,000 acres of land.

## ANNEXATION OF NEW ZEALAND BY GREAT BRITAIN.

On January 30, 1840, William Hobson, a captain in the British Navy, issued a proclamation as lieutenant-governor of the British settlement in progress in New Zealand, declaring the extension of the former boundaries of New South Wales so as to comprehend any part of New Zealand that had been or might be acquired in sovereignty by Her Britannic Majesty. On the same day he issued another proclamation, by which it was declared that Her Majesty did not deem it expedient to recognize as valid any titles to land in New Zealand which were not derived from or confirmed by Her Majesty. But, said the proclamation, in order to dispel any apprehension that it was intended to dispossess the owners of land "acquired on equitable conditions, and not in extent or otherwise prejudicial to the present or prospective interests of the community," Her Majesty had directed that a commission should be appointed, before which all claims to land would have to be proved.

On the 6th of February, 1840, a week after the issuance of these proclamations, Governor Hobson, on the part of Her Britannic Majesty, concluded with the native chiefs the treaty of Waitangi, by which, for the sole consideration of being made subject to the British Crown, they ceded their sovereignty and powers. Nevertheless, the treaty confirmed and guarantied to the "chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession." The only qualification of this confirmation and guaranty of title is the cession to Her Majesty of a right of preëmption of such lands as the native proprietors might, at any time, be disposed to alienate. This was only a further recognition of the title of the native chiefs, from whom Mr. Webster's titles were also derived prior to the date of the treaty. It is therefore unnecessary to argue that the title of Mr. Webster was equal in origin with that of the British Crown, and, being prior in time, was superior in right and could not be affected either by the proclamation of Governor Hobson or by the treaty of Waitangi.

## POSITION OF MR. WEBSTER AFTER ANNEXATION.

The position in which Mr. Webster found himself after the proclamations of Governor Hobson is very simply, but not the less forcibly, stated in a letter to J. H. Williams, esq., United States consul at Sydney, New South Wales, dated November 4, 1840. In this letter Mr. Webster said:

"No doubt you are aware that the British Government have taken possession of some parts of these islands and have issued proclamations and other notifications that all titles to land acquired from the native chiefs are to be sent to the colonial secretary's office at Sydney to be examined. I suppose they intend to allow whatever portion of land they may think proper. I beg to call your attention to know what all Americans in this island are to do with the large quantity of land they have purchased.

"No doubt you are aware that a great part of the oil taken by American ships is caught on this coast, and I can safely say that there are ten American ships come into these ports to recruit to one ship of any other nation. I beg to acquaint you of the valuable lands I have purchased from independent chiefs of this place, and beg you will make it known to the American Government as early as possible. The land purchased by me and the amount paid for it is as follows:

Paid for Barrier Island, in March, 1837, and the title deeds, signed by thirty-six independent chiefs, giving up all right and title to the same, cash and merchandise .....	£1, 200
Paid for part of the island of Waiheke, in 1836 .....	558
Paid for land at Coromandel Harbor, in 1836 .....	1, 000
Paid for Mereury Island, in 1838 .....	944
Paid for land at Point Rodney, in 1838 .....	490
Paid for land on banks of river Thames, 1836 .....	250
Paid for land on banks of river Watemata, 1837 .....	280
Paid for Bay of Plenty, 1839 .....	450
Paid for river Piako, 1839 .....	1, 375
Amount expended in building and other improvements, from 1835 to 1840 .....	9, 060
Total .....	15, 607

Equal to about \$78, 145.

\* \* \* \* \*

"You will see by the copy of the title deeds that I have expended equal to \$78-145, for which I have bought about 500,000 acres of land, and, to the best of my knowledge, there has been about 1,000,000 acres purchased in these islands by citizens of the United States, and for which they have expended about £50,000 sterling, besides several years' labor and running great risks where the natives were not civilized. They (the British Government) have already put me to a loss of £6,000 sterling by their acts. They have not taken any of my land as yet, but I expect they will take all from me and every other American, unless our Government will take it in hand to stop it. I trust you will make this known to the United States Government as early as possible, so that all Americans may know how to act in this case."

#### BRITISH ORDINANCES.

Prior to the date of this letter an act was passed in New South Wales for the purpose of creating a commission "to examine and report on claims to grants of land in New Zealand," and it was doubtless the passage of this act that gave rise to the reports to which Mr. Webster adverted in his letter. Subsequently this act became inoperative by reason of the severance of New Zealand from New South Wales, and on June 9, 1841, an ordinance, which was virtually a transcript of the New South Wales act, was passed in New Zealand by the governor and his council. This ordinance and the prior act, both of which were drawn in conformity with instructions of the home Government, declared:

"All titles to land in the said colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are, and the same shall be, absolutely null and void."

It was further provided that no grant of land should be recommended by the commissioners under the ordinance which should exceed in extent 2,560 acres, unless they were specially authorized thereto by the governor, with the advice of the executive council, or which should comprehend any headland, promontory, bay, or island that might be required for the purpose of defense, or for the site of any town or village, reserve, or for any other purpose of public utility, nor of any land situate on the seashore within 100 feet of high-water mark. And it was further provided that nothing in the ordinance should oblige the governor to make and deliver any grant unless his excellency should deem it proper to do so. There was also a provision that the commissioners should not recommend any grant whatever of any land which, in the opinion of a majority of them, might be required for the site of any town or village, etc.

#### ORDERS RESPECTING FOREIGNERS.

By an order of the lieutenant-governor of New Zealand dated February 9, 1841, it was directed that all persons not the subjects of Her Majesty who had purchased land from the aborigines previous to January 30, 1840, should forward a copy of their claims to the colonial secretary's office at Auckland on or before June 1, 1841.

In the New Zealand Gazette of October 20, 1841, there was published another order of the governor, in which it was stated "for the information of foreigners claiming land in New Zealand by purchase from the natives prior to the proclamation issued by his excellency Sir George Gipps, bearing date the 14th day of January, 1840, that by a dispatch from the Right Hon. Her Majesty's principal secretary of state for the colonies, it is ordered that all claims, whether British or foreign, be investigated and disposed of by the commissioners appointed for that purpose."

The order continued as follows: "Such foreigners, therefore, as have not already forwarded the particulars of their claims to the Government are required to send them to this office without delay. These particulars should set forth the precise situation of the land claimed, its extent and boundaries, the names of the native sellers, and the consideration paid to them, and, in case of the claims being derivative, the name of the intermediate possessors of the land and of the original purchaser and the consideration given by him to the natives."

## SUBMISSION OF MR. WEBSTER'S CLAIMS.

On the 20th of July, 1841, being thus expressly required to do so, Mr. Webster sent seven copies of titles to land and seven statements of purchases to the colonial secretary of New Zealand, with a request that they be laid before the commissioners *for examination only*. At the same time he said:

"I have sent all my claims to land in this country before the United States Government by the advice of the American consul of Sydney, and I trust his excellency Governor Hobson will not suffer any of my lands be interfered with until the question is settled. I have been a resident of New Zealand for seven years, and have expended a large sum of money and undergone a great deal of trouble and hardships.

"I am willing to come forward and prove all my purchases, but I trust that I shall be allowed time to do it, for I am very busy now with ships, and am under heavy penalties for the fulfillment of my agreements, and I find it will take a long time to get all the natives and witnesses to my purchases of lands together, and the expense will be very great. I find myself already at a great loss, and it appears to me that I am to be put to much more, and I do not know who to look to for it. I trust, when my claims for purchases to land (in this country) are examined, that they will prove to be all well understood by them that hear them; and it was all bought before that any government was formed here; and I further consider that all I have has been dearly earned, and I trust that before I am dispossessed of any of it it will be proved who has the best right to it.

"Hoping that I have not made any unjust remarks, I have, etc.,

"WM. WEBSTER."

In reply to this letter Mr. Webster received a communication from the colonial secretary dated August 7, 1841, which is as follows:

COLONIAL SECRETARY'S OFFICE,  
*Auckland, August 7, 1841.*

SIR: I have had the honor to receive and lay before his excellency the governor your letter of the 20th ultimo, transmitting copies of titles of claims to land in New Zealand, and am instructed to acquaint you that you must distinctly state whether you claim the land as a British or American subject. If the former, your case will take the course the law prescribes; if the latter, your claims must depend upon the decision which may be arrived at by the joint consent of both Governments. The governor further directs me to inform you that in seeking assistance from a foreign government you must relinquish all the rights of a British subject, such as the ownership of a British vessel, which you are now understood to possess: but, if the claims be lodged as a British subject, his excellency will consent to their being laid before the commissioners in the usual way.

I have, etc.,

WILLOUGHBY SHORTLAND.

MR. WILLIAM WEBSTER,  
*Coromandel Harbor.*

On the 3d of October, 1841, Mr. Webster sent the following answer:

COROMANDEL HARBOR, *October 3, 1841.*

SIR: In reply to yours concerning my claims to land, I wish my claims to be laid before the commissioners, and am willing to take my chances with all others. But I trust that they may be left until the last, for it will put me to a serious inconvenience to attend to them now.

I have, etc.,

WM. WEBSTER.

It is stated in the memorandum of Sir Robert Stout that upon the cases submitted by Mr. Webster there were made the following entries:

## MEMORANDUM FOR THE GOVERNOR.

The information furnished regarding these claims is sufficiently full to enable them to be referred for investigation. It appears from Mr. Webster's letter of July that these are only a part of his claims—he mentions twenty-seven as the total number—but states that the documents referring to the other claims are mislaid.

WILLOUGHBY SHORTLAND.

OCTOBER 30.

## MINUTE BY GOVERNOR.

Let Mr. Webster's claims be submitted in the usual way.

W. HOBSON.

NOVEMBER 2, 1841.

On the strength of these communications, the memorandum of Sir Robert Stout contains the following assertions:

"From the foregoing correspondence no other inference can be drawn but that Mr. Webster intended to have his claims heard as those of a British subject; and,

"*Firstly*. That the governor so interpreted his intention is apparent from the minute of the 2d of November, 1841, where, in directing Mr. Webster's claims to be submitted in the usual way he adopts the course and uses the identical language which the colonial secretary, in his letter of the 7th of August, informs Mr. Webster would be adopted if he advanced his claims as a British subject.

"*Secondly*. Mr. Webster, in his reply of the 3d of October, where he expresses his wish that his claims should be laid before the commissioners, requests that very course to be adopted which the colonial secretary informed him would be adopted if he advanced his claims as a British subject.

"*Thirdly*. Mr. Webster appeared before the commissioner's court and gave his evidence on oath in respect of each claim, without protest, after his claims had been notified in the usual way, and never asserted any exceptional claim as an American citizen; and, also, he accepted the awards in each claim and the crown grants issued in virtue of the said awards.

"*Fourthly*. Mr. Webster did not relinquish the rights of a British subject, such as the ownership of a British vessel which he possessed, and which, in the aforesaid letter of the colonial secretary, he was informed he would be required to do if he advanced his claims as a foreigner.

"It is to be especially noted here that, although Mr. Webster's letter of the 20th of July, 1841, to the colonial secretary, wherein he advances his claims as an American citizen, has been submitted to the Senate of the United States, and is referred to in the report of the committee of the Senate (post, page 41), yet no evidence appears of Mr. Webster having submitted to the Senate either the colonial secretary's letter of the 7th of August or his own reply thereto of the 3d of October, 1841. From this surprising omission I can not but conclude that it was an act of willful disingenuousness on Mr. Webster's part, done for the purpose of suppressing all evidence which might be adduced to prove that he advanced his claims before the land claims commissioners as a British subject, and not as an American citizen."

It is not thought to be necessary now to consider so much of the above-quoted passage as makes against Mr. Webster a charge of "willful disingenuousness" and suppression of evidence. On his part, Mr. Webster vehemently denies that some of the documents which accompany Sir Robert Stout's memorandum, apparently as contemporaneous records of the investigation of the land claims, possess that character. Mr. Webster asserts that he left Coromandel Harbor on June 23, 1843, when the examination of his cases was concluded, and never afterwards saw any commission then or afterwards appointed, and that all proceedings subsequent to that date in respect to his titles were *ex parte* and without notice to him and without his knowledge. In respect to some of the proceedings that appear to have taken place in and after June, 1843, before Commissioner Godfrey, Mr. Webster points, in confirmation of his statement, to the following passage in Sir Robert Stout's memorandum:

"The first commission concluded its labors by reporting on all the claims referred to it. Major Richmond, on the 8th of March, 1844, was appointed superintendent of the southern division of New Zealand and Col. Godfrey returned to England."

Just after this the following statement is also noted:

"In the year 1844 an ordinance in amendment of the above-recited ordinance was passed giving to a single person the powers granted to two commissioners under the ordinance of 1841. This was called 'the land claims ordinance, 1844, session III, No. 3,' and Mr. Robert Appleyard Fitz Gerald being appointed, on the 25th of March, 1844, sole commissioner thereunder, he formed what is herein called the second commission."

In the memorandum of Sir Robert Stout there are found seventeen or eighteen pieces of evidence which purport to have been "taken in court" before Commissioner Godfrey from May to August, 1844. It is found that the amended and last report of Commissioners Richmond and Godfrey bears date December 18, 1843,

Their recommendations were referred to the second commission, consisting of Mr. Fitz Gerald, on April 10, 1844, and the report of Commissioner Fitz Gerald, which is said to have been adopted, bears date April 22, 1844.

The charge of suppression of evidence made against Mr. Webster in respect to the submission of his claims to the land commission adds force to the impression that the answer to his claims made in the memorandum of Sir Robert Stout is chiefly based upon the ground that Mr. Webster sought to be, and was, treated as a British subject. In the passage above quoted from the memorandum four reasons are set forth to sustain that pretension. In respect to these, it is to be observed:

(1) That the notice issued to claimants required foreigners, as well as British subjects, to present their claims to the commission.

(2) That the commissioners did not possess power to make grants, but only to investigate claims and make reports and recommendations to the governor.

(3) That the letter of Mr. Webster of July 20, 1841, in which he submitted seven titles for examination, clearly and unmistakably asserted his American citizenship.

(4) That the reply of the colonial secretary of August 7, 1841, intimating that Mr. Webster's claims would not be considered so long as he should seek the protection of his Government, was inconsistent with the notice previously issued to claimants, and not warranted by the scope and functions of the commission.

(5) That Mr. Webster's statement in his letter of October 3, 1841, that he was "willing to take his (my) chances with all others" was not a renunciation of his American citizenship nor an assumption of British citizenship.

(6) That there is no evidence whatever to show that Mr. Webster was ever supposed to be a British subject, nor is it asserted that he ever performed any act by which he could be held to have assumed that character.

(7) That the statement in the colonial secretary's letter of the 7th of August, 1841, that Mr. Webster was "understood to possess" a British vessel is not an allegation that he did own such a vessel, and that no evidence whatever is adduced to show that the statement had any other foundation than rumor of the vaguest character. No authority is given for the statement; neither name nor description of the vessel is afforded. Mr. Webster denies that he owned such a vessel, and there is no apparent reason to question his denial.

(8) That if it had been true that Mr. Webster owned a British vessel, no law of Great Britain is known by which such ownership would have been tantamount to an act of naturalization.

(9) That, no evidence being adduced to show that Mr. Webster owned a British vessel, the inference sought to be drawn from the assertion that he "did not relinquish the right of a British subject, such as the ownership of a British vessel which he possessed," must be treated as wholly without justification.

(10) That the letter of the colonial secretary of August 7, 1841, may be regarded as conclusive evidence that Mr. Webster had not been naturalized as a British subject.

(11) That that letter was inconsistent with the instructions given to the colonial authorities, as disclosed by the note of Lord Aberdeen to Mr. Everett of February 10, 1844, which says:

"Having now received an answer from the colonial department, the undersigned has the honor to inform Mr. Everett, with reference to the first head of complaint, that, in consequence of certain questions raised by the American consul at Sydney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged; but that where a doubt arose whether the alien made a bona fide purchase of the land the settler should be treated as any British subject and his claim disposed of accordingly."

(12) That the argument that Mr. Webster elected to be a British subject and to renounce his rights as an American citizen is not sustained by the facts and is unwarranted by the law.

The anxiety exhibited on this subject, and the ingenuity in argument in regard to it in the memorandum of Sir Robert Stout, are amply justified by a review of the

#### TREATMENT OF MR. WEBSTER'S CLAIMS.

Taking the proceedings of the first commission as set forth in the memorandum, we have the following in respect to Mr. Webster's claims:

*Case No. 305.*—Two hundred and fifty acres; conveyance by natives; consider-

ation, merchandise to value of £208. Report: Bona fide; consideration (goods), £114 12s.; Sydney prices, £343 16s.

305 A.—Six hundred acres; deed; consideration (merchandise and cash), £260. Report: Bona fide; 250 acres; consideration (goods), £94 14s. 6d.; Sydney prices, £284 3s. 6d.

305 B.—Fifteen hundred acres; deed; merchandise, £90. Report: Bona fide; goods, £71 18s. 6d.; Sydney prices, £215 5s. 6d.

305 C.—Twenty-five hundred acres; deed; merchandise, £203. Report: Bona fide; 800 acres; goods, £89 10s.; Sydney prices, £268 10s.

305 D. 305 E. 305 F. 305 L.—These are alleged to have been withdrawn and no report appears on them. They comprise 4,000 acres of land and two islands whose area is not stated; and consideration, in cash and merchandise, for the whole is claimed to have been paid to the amount of £1,820.

305 G.—Boundaries stated, but not contents: deed; merchandise, £490. Report: Bona fide; 10,000 acres; goods, £140 8s.; Sydney prices, £421 4s.

305 H.—Three thousand acres; deed; merchandise, £450. Report: Not purchased from rightful owners.

305 I.—Three thousand acres; deed; merchandise, £108 1s. Report: Bona fide; 3,000 acres; cash, £15; goods, £62 12s.; Sydney prices, £202 16s.

305 J.—Six thousand acres; deed; merchandise, £944. Report: Bona fide; acreage not known: cash and goods, £278; Sydney prices, £834.

305 K.—Eighty thousand acres: deed; cash and merchandise, £1,195. Report: Bona fide; 80,000 acres; cash, £35; goods, £563 16s.; Sydney prices, £1,691 1s. Total, £1,726 8s.

305 M.—Two thousand acres; deed; merchandise, £108. Report: Bona fide; 3,500 acres; cash and goods, £80.

32.—Twenty thousand acres; deed; merchandise, £1,140. Report: Bona fide; cash and goods, £580 15s.; boundaries, but not contents, stated.

The report of the first commission covers fourteen claims. In respect to eight of these (305, 305 A. 305 B. 305 C. 305 G. 305 I. 305 K. 305 M) the commission found that Mr. Webster had purchased in good faith 108,300 acres. In respect to these same tracts his claims amounted to 119,850 acres. The commission also found that he had paid for them in cash and goods £1,167 10s. 12d., or, in Sydney prices, about £3,427 6s.

Four cases (305 D. 305 E. 305 F. and 305 L) Mr. Webster is alleged to have withdrawn, as he asserts, erroneously. These four comprise 4,000 acres and two islands whose area is not stated. The consideration alleged to have been paid is £1,820. In case 305 H. containing a claim for 3,000 acres (consideration £450), the commission reported that the claimant had not purchased from the rightful owners.

By their amended report of December 18, 1843, the commissioners recommended the following allowances: In case 305, 240 acres; 305 B, 550 acres; 305 C, 800 acres; 305 G, 1,944 acres; 305 I, 1,187 acres; 305 K, 2,560 acres; total, 7,281 acres. "to be reduced in the aggregate to the maximum grant of 2,560 acres," in accordance with the land ordinance, which forbade a grant of greater extent. But no grants were made upon these recommendations.

In 1844, as above shown, an amendatory ordinance was passed constituting a commission of one person. In April, 1844, the governor brought before the council the awards recommended by Commissioners Godfrey and Richmond in cases 305, 305 A, 305 B, 305 C, 305 G, 305 I, and 305 K, amounting to 7,541 acres; and, upon the advice of the council that the commissioners should be authorized to recommend an extension of the grant, all the awards were referred to the second commission, with instructions to extend the grant.

The second commission, consisting of Mr. Fitz Gerald, reported as follows:

I do most conscientiously recommend for his excellency's approval that grants be issued to the under-mentioned parties, upon a letter of authority to that effect from Mr. Webster:

	Acres.
Claim No. 305, William Webster	125
Claim No. 305 A, William Webster	125
Claim No. 305 C, William Webster	400
Claim No. 305 G, William Webster	1,944
Claim No. 305 I, William Webster	1,187
Claim No. 305 K, William Webster	1,219
Claim No. 305 B, David E. Munro	550
Claim No. 305, Henry Downing	125

	Acres.
Claim No. 305 C, Henry Downing .....	400
Claim No. 305 K, Henry Downing .....	320
Claim No. 305 A, Peter Abercrombie .....	125
Claim No. 305 K, Peter Abercrombie (one-eighth of his purchase from Webster) .....	5,000
Claim No. 305 K, Felton Mathew (one-quarter of his purchase from Webster) .....	2,560
Claim No. 305 K, John Johnson (one-quarter of his purchase from Webster) .....	1,280
Claim No. 305 K, Vincent Wanostrocht (one-quarter of his purchase from Webster) .....	250
Claim No. 305 K, John Wrenn and Jeremiah Nagle (one-quarter of their purchase from Webster) .....	150
Claim No. 305 K, Arthur Devilin (one-quarter of his purchase from Webster) .....	1,255
Claim No. 305 K, George Russell .....	640
Amounting in the aggregate to .....	17,655

ROBT. J. FITZ GERALD,  
*Commissioner.*

LAND OFFICE, *Auckland*, April 22, 1844.

Upon this report the memorandum of Sir Robert Stout contains the following comment :

"It must ever remain a mystery how Mr. Commissioner Fitz Gerald could have made such a recommendation."

It is thought that this mystery is completely solved by the commissioner himself in the memorandum which he made of the reasons for his action, and which is found in the report of Sir Robert Stout, as follows :

"MEMORANDUM BY MR. COMMISSIONER FITZ GERALD.

"Reasons for extending a grant of land to Mr. William Webster :

"(1) By the accompanying synopsis of the land claims of Mr. Webster it appears that his outlay amounts to £7,787 13s., which, according to the valuation scale in the land-claims ordinance, he may be considered as having paid for 50,904 acres ; and, even limiting his outlay to the mere payments to the natives, he would be fairly entitled to 17,950 acres.

"(2) Considerable sales of land having been made by him on the faith of all his valid purchases being recognized by the Crown.

"(3) Should he not be enabled, by great liberality on the part of his excellency, to meet his engagements, even partially, he is likely to be overwhelmed with lawsuits and subjected to great losses.

"(4) Mr. Webster is one of the most enterprising settlers in this colony, having established a shipbuilding yard, several whaling stations, water-mills, and other improvements.

"For these reasons I do most conscientiously recommend for his excellency's approval that grants be issued to the under-mentioned parties, upon a letter of authority to that effect from Mr. Webster."

In view of these reasons, which the memorandum of Sir Robert Stout criticises, but does not in any respect invalidate, it is not perceived why "mystery" should have been attributed to the recommendation of Mr. Commissioner Fitz Gerald. If the reasons stated by that official for his recommendation were not so obviously just and true, it is thought that the adoption, as stated in Sir Robert Stout's memorandum, of that recommendation by the authorities at that time would sufficiently divest it of mystery and demonstrate its propriety. Still more completely does the "mystery" vanish when it is recollected, as hereinbefore pointed out, that it appears by the documents contained in Sir Robert Stout's memorandum that the reference of the awards of the first commission in the cases of Mr. Webster to the second commission, consisting of Mr. Commissioner Fitz Gerald, was "with an instruction to recommend an extension of the grants."

In the memorandum of Sir Robert Stout it is stated that Governor Fitzroy adopted the recommendations of Commissioner Fitz Gerald, and on May 1, 1844, issued grants in accordance with them. It is not asserted that Mr. Webster ever gave the "letter of authority" which the recommendation of Commissioner Fitz

Gerald assumed to be necessary. But the memorandum of Sir Robert Stout contains the following statement:

"Webster received his grants for 5,000 acres, and within less than four months had transferred the whole of these lands to his creditors, besides the 12,655 acres granted directly to them, leaving himself without an acre of all his purchases and still a debtor to the Sydney merchants."

And this statement is made the text of animadversions upon the speculative character of Mr. Webster's dealings.

This may be regarded as somewhat remarkable, when both the first and the second commission found that Mr. Webster had made bona fide purchases for value, before the annexation of the island by Great Britain, of more than 105,000 acres of land, exclusive of various large tracts upon which they did not report; when it is also considered that Mr. Webster was, by universal testimony, an industrious and meritorious settler; and when it is further observed that his conduct throughout shows that he was making every effort to deal honorably with his creditors at a time when the annexation of the islands and the ensuing land ordinances were threatening him with the commercial disaster in which they had then partially, as they afterwards completely, involved him.

In 1845, the year after the grants above alleged, it is asserted that certain correspondence took place between Mr. Webster and the New Zealand authorities, which was as follows:

*Mr. Webster to Mr. Commissioner Fitz Gerald.*

AUCKLAND, March 8, 1845.

SIR: I take the liberty of writing to you to know what has been the decision on my two land claims. I believe they are No. 305 H: one is the Big Mercury Island and the other is a piece of land near the river Tairua, in the Bay of Plenty. Both of those claims was examined before Commissioner Godfrey at Coromandel Harbor, and I have not yet heard any more of them. The Mercury Island was purchased in 1838. I paid upwards of £300 for it, and have had possession of it ever since, and have expended a deal of money on it; but the whole of the payment agreed on was not given to the natives, and when the claims was examined they agreed to give me a part of it for what they had received. The piece of land near Tairua was also purchased in 1838, and I paid about £400 for it; and since that I have expended about £400, for which I have never received any return for whatever. I have never heard of any dispute of the title, which, I suppose, the evidence taken by the commissioner will prove.

Your answer to this will oblige, your most obedient servant,

WM. WEBSTER.

Commissioner FITZ GERALD, etc.

MINUTE THEREON BY THE GOVERNOR.

Very large grants having been made to Mr. Webster, no further grant can be made until the opinion of the secretary of state as to the former grants is made known.

R. F., March 10, 1845.

MR. FITZ GERALD: Direct Mr. Chipchase to communicate this reply to Mr. Webster, who is now in Auckland, but about to leave immediately.

R. F., March 10, 1845.

*The private secretary to Mr. Webster.*

GOVERNMENT HOUSE, March 10, 1845.

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims, marked 305 H and 305 J, and is sorry to find himself precluded from authorizing any further grant to be made to you at present, on account of the largeness of those grants already made in your name.

J. W. HAMILTON,  
Private Secretary.

P. S.—The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

As the recommendation of Commissioner Fitz Gerald is, in the memorandum of Sir Robert Stout, declared to be a "mystery," the reply of the governor, made through his private secretary, is pronounced in the same memorandum to be "unfortunate in its expression." As the reply only evinces an intention to treat the acquisitions of Mr. Webster in a spirit of justice, on the clear principle of allowing him what he held "in undisputed possession," the unfortunateness of its expression is not perceived. In the memorandum of Sir Robert Stout the fact appears to have been wholly neglected that the reports of the commissioners, so far as they recommended grants, were only advisory. This fallacy is disclosed in the argument that because the commissioners reported that no grants could be made in certain cases on account of the largeness of the grants made in other cases, the governor could not have referred to the claims mentioned by Mr. Webster in which no grants were recommended.

It is to be remembered that in those very cases, or at least in some of them, the commissioners had reported valid titles, and in no instance discovered any evidence of bad faith. Nothing unfortunate is perceived in the language of the governor, nor is there any reason to suppose that it was intended to have any other effect than to declare the principle that the undisputed possession of land was to be treated as constituting a valid basis for a grant. It is not denied that Mr. Webster had made use of a portion of his lands; nor, notwithstanding the effort to throw discredit on Commissioner Fitz Gerald's recommendation, is any attempt made to impugn his statements that Mr. Webster had made large outlays on his land in addition to the purchase-money and that he was "one of the most enterprising settlers" in the colony, "having established a shipbuilding yard, several whaling stations, water mills, and other improvements." It is not strange, therefore, that the governor should have expressed the belief that the land which Mr. Webster held in undisputed possession would ultimately be granted to him.

### THIRD COMMISSION.

But Mr. Webster's claims were not in reality disposed of until 1862, long after he had left the country, and without notice, by a third commission, consisting of Mr. F. D. Bell. This commission was constituted under "the land claims' settlement act, 1856," which made provision for the setting aside of all grants made under previous ordinances. It required all claimants to have the exterior boundaries of their claims surveyed and plans sent in to the commission, together with their grants and all documents and deeds relating to the alienation of any claims by an original claimant; but it prohibited the reconsideration of any case disallowed by any previous commission, or that had been withdrawn by the claimant.

Under this prohibition, the third commission did not examine and made no grant in cases 305 D, 305 E, 305 F, 305 L, 305 J, and 305 M, comprising claims to extensive tracts of land for which valuable consideration was given. The grants set forth in the report of Mr. Bell accompanying the memorandum of Sir Robert Stout are the only ones finally made in respect to the claims of Mr. Webster. It is stated in that memorandum "that all the grants issued under the ordinances were surrendered to him (Mr. Bell), together with all documents relating to the land described in such grants."

Referring to the report of Mr. Bell, we find, in respect to the claims of Mr. Webster, the following result:

"In case No. 305, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 250 acres, this third commission, in 1861, granted to R. Daere 57.5 acres and to H. Downing 57.5 acres, in all 115 acres.

"In case No. 305 A, in which the commissioners reported, in 1843, that Mr. Webster had purchased and paid for 250 acres, this third commission, in 1860, granted to G. Beeson 335 acres.

"In case No. 305 B, in which the commission reported, in 1843, that Mr. Webster had purchased in good faith and paid for 1,500 acres, this third commission ordered a grant to be issued to J. Solomon; but no grant was, in fact, issued.

"In case No. 305 C, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 800 acres, this third commission, on the 20th of November, 1847, granted to R. Daere 284 acres, and on the 3d of May, 1860, to the same person, 384 acres, and on the 25th of January, 1861, to T. Keran 59 acres; in all 727 acres.

"In case No. 305 G, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 10,000 acres, this third commission, at a time not known, granted to R. Daere 1,944 acres, which is said to have been commuted for scrip.

"In case No. 305 I, in which the commissioners reported, in 1843, that Mr. Webster had purchased in good faith and paid for 3,000 acres, this third commission, on the 3d of July, 1860, granted to J. Solomon 885 acres.

"In case No. 305 J, in which the commissioners reported, in 1843, a bona fide purchase of a tract which Mr. Webster alleged to contain 6,000 acres, this third commission made no grant, and no grant was ever made.

"In case No. 305 K, in which the commissioners reported, in 1843, that Mr. Webster had purchased 80,000 acres, this third commission, on the 27th of November, 1878, granted to the heirs of Sir S. Donald 1,464 acres; to F. Whitaker, 12,855 acres and 2,141 acres, and for 294 acres September 30, 1878; total, 16,754 acres.

"In case No. 305 M, in which the commissioners, in 1843, reported that Mr. Webster had purchased in good faith, but only partly paid for, 3,500 acres, no grant was ever made."

Every one of these grants, it may be observed, was made to some person or persons alleged to be derivative owners from Mr. Webster.

#### CONCLUSIONS.

From the foregoing it appears:

(1) That the good faith of Mr. Webster in his land purchases is unquestionable.

(2) That the validity of nearly all his important conveyances from the natives was recognized and admitted, and valuable consideration established.

(3) That, in consequence of the annexation of New Zealand by Great Britain and of the land ordinances adopted and enforced, Mr. Webster was prohibited from selling or conveying or completing title to any of the lands which he had purchased and of which he was in quiet and undisputed possession at the time of the annexation.

(4) That in certain of Mr. Webster's cases (305, 305 A, 305 C, 305 G, 305 I) the land commissioners found that 94,300 acres had been purchased by Mr. Webster in good faith, but recommended grants to him and his assigns of only 17,655 acres.

(5) That in certain other cases (305 B, 305 J, and 305 M) it was shown that 11,000 acres had been purchased by Mr. Webster in good faith, but that no grant whatever was made.

(6) That in certain other cases (305 D, 305 F, and 305 L) no awards were made, on the ground that the claims had been withdrawn, which Mr. Webster denies. And in this relation it is to be observed that the withdrawal of these claims is alleged to have been made before Commissioner Godfrey in May and June, 1844, after he had ceased to be a commissioner and had returned to England, and after the second commission, consisting of Mr. Fitz Gerald, had entered upon its duties.

(7) That these proceedings, which were consummated in 1862 under the act of 1856, were in derogation of the principle conceded by Lord Aberdeen to Mr. Everett in 1844.

(8) That they were in derogation of the same principle as announced by the governor to Mr. Webster a year later, in 1845.

In view of the facts above set forth, it is not perceived what basis there is for the assertion in the memorandum of Sir Robert Stout that "awards were made in his (Mr. Webster's) favor, or in favor of his acknowledged assigns, of every single acre of land which the native owners admitted he had justly bought from them."

These words are found in the concluding paragraph of Sir Robert Stout's memorandum. Above them, on the same page, are the following observations:

"I have to remark that in the year 1874 the secretary of state, in a dispatch to Governor Sir James Fergusson, required a report on Mr. Webster's claims, in order to reply to a complaint made by Mr. L. C. Duncan, on behalf of Mr. Webster, that he had been treated with injustice in their adjudication.

"Mr. O'Rorke, the then commissioner, and at present Sir G. M. O'Rorke, speaker of the house of representatives, furnished to the governor for transmission to the secretary of state a full report on the claims, together with an opinion from Mr. Whitaker as to the accuracy of such report (who had been personally acquainted with all the details of Mr. Webster's land transactions at the Piako) and a further report from Dr. Pollen, then colonial secretary, who had been personally acquainted with Mr. Webster in New Zealand."

An examination of the report of Mr. O'Rorke does not render necessary any

change or modification in the statements herein made in regard to Mr. Webster's claims. The "further report," however, of Dr. Pollen merits examination. It is expressly referred to and put forward in the memorandum of Sir Robert Stout as the statement of a contemporaneous witness and as possessing the peculiar value of a declaration made by an individual "personally acquainted with Mr. Webster in New Zealand." The value of this piece of evidence, which was formulated on July 29, 1874, is readily tested. Dr. Pollen's statement is as follows:

"I knew Mr. Webster during the period of his residence in New Zealand, from January, 1840. He was what was then called a 'trader' on the coast, and was known to represent or to be supported by Sydney merchants.

"Towards the close of the year 1839, when it became certain that the sovereignty of New Zealand was about to be acquired by Great Britain, Mr. Webster, as did many others, dealt largely with natives for land, or, rather, for land claims. There was then no way of ascertaining the right to land of the natives who took 'trade' for their signatures; there was no survey, and the estimate of area within the boundaries, when any boundaries were defined in the deeds of conveyance, was almost always excessive, in many cases ridiculously so. Hence the exaggerated character of some of the claims.

"The early land purchases, which were made with deliberation and care and in accordance with native usage, were rarely questioned, but those which were made in haste immediately before January, 1840, and, as it were, more for the purpose of getting up a "claim" than of acquiring title, were commonly repudiated by the native owners of the land. Some of Mr. Webster's claims are in this category.

"Mr. Whitaker, of Auckland, who has a derivative title through Mr. Webster to a large block of land in Piako district, has not, to this day, been able to get possession from the natives. It will be necessary, in order to keep the faith of the Crown (as the land in question was awarded to Mr. Webster by the land claims commissioner) and to preserve the peace of the country, either to extinguish the native title to this land by purchase or to find for Mr. Whitaker an equivalent elsewhere. A proposal with a view to settlement of this claim is now before this Government.

"Mr. Webster's failure was, as I recollect, of the usual commercial character: he was already in difficulties, as shown by his arrest in Sydney in 1840, and his insolvency was completed in the financial crisis of 1842-'43 in New South Wales, by which his principals there were affected. His misfortune was never, so far as I know, until now attributed to the action of the Colonial Government or of the Imperial Government. If any such complaint had been made in the early days of settlement, I think that I must have heard it. I do not think that it would have been made in the presence of any person familiar with the facts. It may at present be regarded as a lawyer's plea, merely, on his client's behalf.

"DANIEL POLLEN.

"JULY 29, 1874."

The first observation to be made upon this statement is that Dr. Pollen does not assert acquaintance with Mr. Webster prior to January, 1840, before which time every title claimed by Mr. Webster was acquired. The next thing to be noticed is the declaration that "towards the close of the year 1839, when it became certain that the sovereignty of New Zealand was about to be acquired by Great Britain, Mr. Webster, as did many others, dealt largely with the natives for land, or rather land claims."

In answer to this, it is to be observed, in the first place, that the commissioners found and reported good faith and valuable consideration in all Mr. Webster's purchases which they examined. In every case but one they found that the purchases had been made from the rightful native owners, and in that case valuable consideration for the purchase was reported. But the conclusive refutation of the impugnments of Dr. Pollen is found in a review of the claims examined and reported upon by the commissioners, as follows: 305, purchased June 4, 1837; 305 A, purchased December 8, 1836; 305 B, purchased November 23, 1839; 305 C, purchased January 30, 1837; 305 D, purchased 1836; 305 E, purchased 1838; 305 F, purchased 1836; 305 L, purchased November 24, 1839; 305 G, purchased January, 1839; 305 H, purchased November 23, 1839; 305 I, purchased 1836 and 1838; 305 J, purchased May 20, 1839; 305 K, purchased December 31, 1839; 305 M, purchased 1838.

It thus appears that out of fourteen cases or claims only four (305 B, 305 L, 305 H, and 305 K) arose in the latter part of 1839 so as to fall under Dr. Pollen's

general charge that Mr. Webster was speculating on the probable annexation of the island by Great Britain. In view of these facts, no comment is necessary upon the value of the opinions and recollections stated in the last paragraph of Dr. Pollen's memorandum. What is meant by the declaration that "Mr. Webster's failure was, as I (Dr. Pollen) recollect it, of the usual commercial character?" "He" (Mr. Webster), says Dr. Pollen, "was already in difficulties, as shown by his arrest in Sydney in 1840." This was after the proclamations of Lieut. Governor Hobson invalidating the land titles. Dr. Pollen further says: "His misfortune was never, so far as I know, until now attributed to the action of the colonial government or of the Imperial Government. If any such complaint had been made in the early days of settlement, I think that I must have heard it. I do not think that it would have been made in the presence of any person familiar with the facts. It may at present be regarded as a lawyer's plea, merely, on his client's behalf."

The value of this evidence, either upon the score of information, of recollection, or of competency, is easily tested.

The very allegation that Dr. Pollen says would not have been made by Mr. Webster "in the presence of any person familiar with the facts" was made in the letter of Mr. Webster to the colonial secretary of July 20, 1841, heretofore quoted, and was never questioned. But this is not all. The fact appears equally and unmistakably in the recommendation of Mr. Commissioner Fitz Gerald, which bears conclusive evidence of the good faith of Mr. Webster's purchases, of his large outlays upon and development of his land, and of his enterprising and useful character as a settler.

It may be thought somewhat significant that the attack made in 1874, and now sanctioned and renewed by Sir Robert Stout, upon the conduct of Mr. Webster is conclusively answered by British official records, which, being nearly contemporaneous with the transactions of Mr. Webster, and containing the testimony of persons having actual knowledge of the facts, uniformly attest his good faith and the meritorious character of his claims. In 1843 his claims were found to be bona fide, but were disallowed on the ground that the ordinances did not permit him to hold what he had purchased and paid for in good faith. The disallowance was modified, completed, and made final under the act of 1856. In 1874, when he presses for the recognition of the claims so disallowed, another and wholly inconsistent ground is assumed against all the evidence; and it is alleged that he is not entitled to further consideration because he was a dealer in "land claims" in anticipation of the annexation of New Zealand by Great Britain.

These two positions can not both be maintained. Nor, if the latter position be true, can it be understood why, as the memorandum of Sir Robert Stout constantly reiterates, Mr. Webster was treated with exceptional liberality. Such treatment can be explained only on one or both of the suppositions that the good faith of Mr. Webster's transactions was admitted or that a partial recognition was made of his rights as an American citizen.

In regard to the Piako tract, which he purchased in 1838, and for which a deed was executed in 1839, Mr. Webster states that, before the case came before the commissioners in 1845, he sent a surveyor with a party of chiefs and others from whom he had made his purchase and measured the front boundary, which extended about 21 miles along the river bank, and then marked each corner of the tract, which extended about 8 miles back from the river. In regard to the fact and notoriety of this purchase, Mr. Webster refers to a report of George Clarke, "protector of aborigines," to the colonial secretary of New Zealand, which was transmitted to the British Government, in which there is the following:

"Upon the western side of the river (Piako) is the extensive purchase of Mr. Webster, who claims upwards of 40 miles of frontage, two-thirds of which is unavailable, being swamp; the upper part is good; the depth of the river for about 30 miles is less than 8 feet."

The commissioners found that he had made bona fide purchases from the chiefs, as he alleges.

The claim which Mr. Webster now sets forth is as follows:

(1) For the value of 11,000 acres of land (included in cases 305 B, 305 J, 305 M), found to have been purchased in good faith, but which were never granted to him or his assigns, and which he was prohibited by the land ordinances and officers from selling or conveying, estimated at £1 per acre, £11,000.

(2) For the value of 84,300 acres of land (included in cases 305, 305 A, 305 C, 305 I, 305 K), found to have been purchased by Mr. Webster in good faith, less 5,000 acres assigned to R. Dacre, leaving 79,800 acres, estimated at £1 per acre, £79,000.

(3) For the value of 40,960 acres of land, comprised in case 305 G, and proved to have been purchased in good faith, estimated at £1 per acre, £40,960.

(4) For the value of 3,000 acres, case 305 H, proved to have been purchased in good faith, and for the value of spars taken from the land for the use of the British Navy, £25,645.

(5) For the value of 9,000 acres (cases 305 D, 305 F, 305 L), purchased in good faith and erroneously alleged to have been withdrawn from the commission, estimated at £1 per acre, £9,000.

Mr. Webster also asserts claims to other tracts of land, comprising about 200,000 acres, which he estimates at 10s. per acre, and claims damages for the destruction of his credit and business in New Zealand, and contends that interest should be allowed on all the items except the last from January 30, 1840. Mr. Webster does not include in the above statement Barrier Island (case No. 305 E), which he reserves for further consideration.

No. 387.]

LEGATION OF THE UNITED STATES,  
*London, January 17, 1891.*

SIR: Referring to your instruction numbered 350, of September 2 last, I have the honor to inclose herewith copies of a note which I addressed to the foreign office relative to the claim of Mr. Webster against the authorities of New Zealand, and of a communication in reply thereto which I have just received from Her Majesty's Government.

I have, etc.,

ROBERT T. LINCOLN.

Hon. JAMES G. BLAINE,  
*Secretary of State*

[Inclosure No. 1.]

*Mr. Lincoln to the Marquis of Salisbury.*

LEGATION OF THE UNITED STATES,  
*London, October 11, 1890.*

MY LORD: Referring to your lordship's note of the 7th December, 1887, to my predecessor, Mr. Phelps, transmitting copies of a memorandum of Sir Robert Stout, the governor of New Zealand, on the subject of certain American land claims in that colony, I have the honor to recall to your lordship that, in that memorandum, Sir Robert Stout reviews the history of the claims and makes an extended reply to a report of the Committee on Foreign Relations of the Senate of the United States, who have for some time had the subject under consideration. The committee were furnished with a copy of that reply and gave it careful consideration. The result of that consideration is that, on the 11th of June last, the chairman of the committee, by their direction, advised the President of the adoption by the committee of the following resolution:

"Resolved, That the papers in the case of William Webster be transmitted to the President, with the statement that the committee respectfully recommend this matter to his attention, with the accompanying papers, as a claim that is worthy of consideration, and with the request that it be made the subject of further negotiation with the Government of Great Britain."

I am therefore instructed to acquaint your lordship that my Government has made the matter the subject of careful examination, with a desire to arrive at a just determination, and finds itself unable for the reasons which are set forth in a memorandum, of which I have the honor to inclose copies in duplicate, for the consideration of Her Majesty's Government, to accept the conclusions stated in Sir Robert Stout's memorandum.

It is believed by my Government that Her Majesty's Government, upon the perusal of the document inclosed, will find that the above-mentioned conclusions of the governor of New Zealand, and the arguments and allegations, some of them injurious to the claimant, by which those conclusions are reached, are not

justified by the facts as disclosed in the documents furnished by the governor; and it is hoped that a way may be found by friendly consultation between the two Governments to afford Mr. Webster the fair and impartial disposition of his claim to which it is thought he is entitled.

I have, etc.,

ROBERT T. LINCOLN.

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[Inclosure No. 2.]

*Mr. Sanderson to Mr. White.*

FOREIGN OFFICE,  
*London, January 16, 1891.*

SIR: In his note of the 11th of October last, Mr. Lincoln forwarded, for the consideration of Her Majesty's Government, a memorandum in regard to the claim of Mr. William Webster for further compensation on account of certain lands purchased by him from native chiefs of New Zealand before the annexation of that country by Great Britain.

I have now the honor to state that, in pursuance of the assurance given in my reply of the 21st of the same month, this memorandum and all the previous papers and circumstances of the case have been most carefully examined in consultation with the law officers of the crown.

The result of that examination has, however, been unfavorable to the claim, as it is clearly shown that Mr. Webster in the first instance, when bringing his case before the commissioners, under the colonial land claims act of 1856, waived his right to be treated as an alien, and so debarred himself from the right to claim anything beyond what was awarded to him by those commissioners.

Under these circumstances, Her Majesty's Government regret that they are unable to reopen the case, or to entertain Mr. Webster's claim for further compensation.

I have, etc.,  
(For the Marquis of Salisbury.)

T. H. SANDERSON.

[No. 523.]

DEPARTMENT OF STATE,  
*Washington, June 3, 1891.*

SIR: I have to acknowledge the receipt of your No. 387, of the 17th of January last, with which you inclose a copy of a communication which you received from Her Majesty's Government under date of the 16th of that month, in reply to the memorandum accompanying Department's No. 350, of the 2d of September, 1890, touching the claims of William Webster, growing out of his wrongful deprivation of lands belonging to him in New Zealand.

The Department regrets to learn that Her Majesty's Government have, after consultation with the law officers of the crown, taken an unfavorable view of Mr. Webster's claims. This is especially to be deprecated since that view appears to be the result of a misapprehension of the facts. If the facts had been correctly understood by Her Majesty's Government, there is reason to suppose that the result of their deliberations would have been different.

It has been the understanding of this Department that Mr. Webster was in reality deprived of his lands, and of his claims to lands, by the commissioners under the colonial land claims act of 1856. This understanding is set forth in the memorandum which you communicated to the foreign office and is confirmed by the note of the foreign office of the 16th January; but there seems to be an incorrect appreciation of the facts, when Her Majesty's Government state in the same note that it is clearly shown that Mr. Webster in the first instance, when bring-

ing his case before the land commissioners under the colonial act of 1856, waived his right to be treated as an alien, and so debarred himself from the right to claim anything beyond what was awarded to him by that commission.

An examination not only of the memorandum submitted by this Department, but as well of the evidence heretofore presented in opposition to Mr. Webster's claims by the authorities of New Zealand shows that he never brought his claims before the commissioners under the colonial act of 1856. In reality, he was then in the United States, and was pressing his claims before this Government. At that time he had been nearly ten years absent from New Zealand, during which time the Department fails to find that he had any correspondence with the local authorities, or in any way knew of or countenanced what they did under the land act of 1856.

It is the duty of the Department to bring these facts to the attention of Her Majesty's Government, as you are now instructed to do, since the reply to this Government's representations—due, as it appears to be, to an entire misconception of the facts—can not be regarded as satisfactory and conclusive.

I am, etc.,

WILLIAM F. WHARTON,  
*Acting Secretary.*

ROBERT T. LINCOLN, Esq., etc.,  
*London.*

No. 515.]

LEGATION OF THE UNITED STATES,  
*London, August 19, 1891.*

SIR: Referring to the Department's instruction numbered 528, of June 3 last, I have the honor to inclose herewith copies of a note which I addressed to the Marquis of Salisbury on the 23rd of that month, relative to Mr. Webster's claim to land in New Zealand and of the reply thereto which has just reached me.

The records of this legation show that Lord Aberdeen's note to Mr. Everett of February 10, 1844, was forwarded to the Department of State in Mr. Everett's dispatch No. 95, of March 4, 1844.

I have, etc.,

ROBERT T. LINCOLN.

Hon. JAMES G. BLAINE,  
*Secretary of State.*

[Inclosure No. 1.]

*Mr. Lincoln to Lord Salisbury.*

LEGATION OF THE UNITED STATES,  
*London, June 23, 1891.*

MY LORD: With reference to your note of January 16 last relative to the claims of Mr. Webster against the Government of New Zealand, arising from his alleged wrongful deprivation of lands belonging to him in that colony, I have the honor to acquaint your lordship that my Government regrets to ascertain that an unfavorable view has been taken of the claim in question by Her Majesty's Government, after consultation with the law officers of the crown; and the more so, as this view appears to the Department of State to be the result of a misapprehension of the facts of the case.

It has been the understanding of my Government that Mr. Webster was in reality deprived of his lands, and of his claims to lands by the commissioners under the colonial land claims act of 1856. This view of the case is set forth in the memorandum on the subject which I had the honor to communicate to your lordship on the 11th October, 1890, and is confirmed by your note of January 16 last, but Her Majesty's Government appear to mine to be in error in stating in the same note that it is clearly shown that Mr. Webster, in the first instance, when bringing his case before the land commissioners, under the colonial act of 1856, waived his right to be treated as an alien and so debarred himself from the right to claim anything beyond what was awarded to him by the commission.

An examination not only of the memorandum, but also of the evidence heretofore presented in opposition to Mr. Webster's claims by the authorities of New Zealand, shows that he never brought his claims before the commissioners under the colonial act of 1856. He was at that time in the United States, and was pressing his claim upon my Government, having then been absent from New Zealand for nearly ten years, during which period the Department of State fails to find that he had any correspondence with the local authorities or was in any way aware of or countenanced what they did under the land act of 1856.

I am instructed to bring these facts to the attention of your lordship, and to express the hope that as my Government is of the opinion that the reply of Her Majesty's Government to the representations set forth in the memorandum transmitted with my note of October 11, 1890, is based upon a misconception of the essential facts, and can not therefore be considered as satisfactory or conclusive, Her Majesty's Government will readily reconsider its views upon the subject.

I have, etc.,

ROBERT T. LINCOLN.

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[Inclosure No. 2.]

*Mr. Sanderson to Mr. Lincoln.*

FOREIGN OFFICE,  
London, August 18, 1891.

SIR: I have the honor to acquaint you that, in accordance with the assurance conveyed to you on the 29th of June, Her Majesty's Government have carefully considered the representations in your note of the 23d of that month respecting the land claim of Mr. Webster in New Zealand.

It appears, on further examination of the case, that in the note which I addressed to Mr. White on the 16th of January last a mistake was inadvertently made in the reference to the colonial land claims act of 1856. It was in the year 1841 and to the commissioners under the colonial ordinance of that year that Mr. Webster submitted his claims, having previously received full notice from the governor that if he adopted this course he must be held to claim as a British subject.

While expressing to you my regret that this mistake should have occurred, I have the honor to state that it does not appear to Her Majesty's Government to materially affect the question at issue, nor to involve any alteration of the decision at which they have already arrived. For Mr. Webster having voluntarily accepted the conditions imposed upon him by Governor Fitzroy in 1841, and having submitted his claim as a British subject under the colonial ordinance of that year, Her Majesty's Government are unable to admit that he could at any time afterwards bring in a fresh claim as an American citizen under the principle conceded Mr. Everett by Lord Aberdeen in his note of the 10th of February, 1844.

I have, etc.,  
(In the absence of the Marquis of Salisbury)

T. F. SANDERSON.

[Executive D, Fiftieth Congress, first session.]

**LETTER OF THE PRESIDENT OF THE UNITED STATES, TRANSMITTING THE REPLY OF THE SECRETARY OF STATE TO THE RESOLUTION OF THE SENATE OF FEBRUARY 28, 1887, RELATIVE TO THE VALIDITY OF LAND TITLES IN NEW ZEALAND, ETC.**

To the SENATE:

In answer to the resolution of the Senate of the 28th of February last, requesting the President of the United States to obtain certain information from the Government of Great Britain relative to the proceedings of the authorities of New Zealand concerning the titles to lands in that colony claimed by American citizens, I transmit a report of the Secretary of State, together with the accompanying documents.

EXECUTIVE MANSION,  
Washington, January 5, 1888

GROVER CLEVELAND.

The PRESIDENT:

The Secretary of State, to whom was referred the resolution of the Senate of the 28th of February last, "That the President of the United States be requested to obtain from the Government of Great Britain copies or full statements of all the proceedings of the Government of New Zealand, and of any land commission or board, or other lawful authority that has decided upon, or that has pending before the same, any matter relating to the validity of the titles to any lands that are or have been claimed by American citizens in the islands of New Zealand under grants or deeds made by the chiefs or other ruling powers in said islands prior to the date of the exercise of sovereignty over them by the Government of Great Britain," has the honor to lay before the President the papers relating to the subject, mentioned in the subjoined list.

Respectfully submitted.

T. F. BAYARD.

DEPARTMENT OF STATE,  
Washington, January 4, 1888.

*Mr. Bayard to Mr. Phelps.*

No. 552.]

DEPARTMENT OF STATE,  
Washington, March 7, 1887.

SIR: I inclose herewith for your information a copy of a resolution which was adopted by the Senate on the 28th ultimo, requesting the President to obtain from Her Britannic Majesty's Government copies of certain proceedings in New Zealand in relation to certain lands in that colony claimed by American citizens.

I will thank you, therefore, to apply to the proper quarter for the desired information, adding that the Department would be pleased to have copies in triplicate of any printed papers which may be obtainable in relation to the subject.

I am, etc.

T. F. BAYARD.

EDWARD J. PHELPS, Esq., etc.,  
London.

*Mr. Phelps to Mr. Bayard.*

No. 638.]

LEGATION OF THE UNITED STATES,  
London, December 10, 1887.

SIR: Referring to your instructions, numbered 552, under date of March 7, 1887, transmitting a resolution of the Senate relative to certain American land claims in New Zealand, I have the honor to inclose herewith triplicate printed

copies of a memorandum on the subject by the governor of that colony which were sent me by Her Majesty's secretary of state for foreign affairs on the 7th instant.

I inclose also copies of the correspondence between this legation and the foreign office in reference thereto.

I have, etc.,

E. J. PHELPS.

[Inclosure.]

*Mr. White to Lord Salisbury, March 19, 1887.*

LEGATION OF THE UNITED STATES,  
*London, March 19, 1887.*

MY LORD: I have the honor to inclose herewith the copy of a resolution passed by the Senate of the United States, on the 28th ultimo, requesting the President to obtain from Her Majesty's Government copies of certain proceedings, therein described, of the Government of New Zealand with regard to titles to lands in that colony that are or have been claimed by American citizens; and I beg leave, in accordance with instructions from the Secretary of State, to ask your lordship to be so good as to cause copies of these documents to be obtained for me, with a view to their transmission to the Senate.

I have the honor to add that the Department of State would be pleased to have copies in triplicate of any printed papers on the subject which may be obtainable.

I have the honor to be, etc.,

HENRY WHITE.

[Inclosure 2.]

*Lord Salisbury to Mr. Phelps, July 26, 1887.*

FOREIGN OFFICE, *July 26, 1887.*

SIR: I have placed myself in communication with the secretary of state for the colonies on the subject of Mr. White's letter of the 19th of March last, in which he transmitted to me a copy of a resolution of the United States Senate respecting the land claims of American citizens in New Zealand, and asked to be furnished with the documents therein referred to.

Efforts are being made to procure such papers as may be in existence of the kind which the United States Government desire: but, having regard to the length of time which has elapsed since claims of the nature referred to have been brought forward, Her Majesty's Government can not be sure that they can supply all the papers that may be wanted, and I should be glad to receive from you, if possible, further particulars of what is required.

I have the honor to be, etc.,

PAUNCEFOTE,  
(For the Marquis of Salisbury.)

[Inclosure 3.]

*Mr. Phelps to Lord Salisbury, September 23, 1887.*

LEGATION OF THE UNITED STATES,  
*London, September 23, 1887.*

MY LORD: With reference to your lordship's note of July 26, requesting further particulars with regard to the resolution of the United States Senate respecting the land claims of American citizens in New Zealand, I have the honor to inclose

herewith a copy of Mr. Bayard's reply to the dispatch I addressed to him on the subject, by which you will see that he is not in possession of the information desired, but that application will be made to the Senate in reference thereto when that body reassembles in December next.

I have the honor to be, etc.,

E. J. PHELPS.

[Inclosure 4.]

*Lord Salisbury to Mr. Phelps, October 29, 1887.*

FOREIGN OFFICE, *October 29, 1887.*

SIR: With reference to your note of the 23d ultimo, and previous correspondence, respecting the land claims of American citizens in New Zealand, I have the honor to acquaint you that information has been received from the agent-general for New Zealand in London that a full statement relative to Mr. William Webster's claims is now in preparation and will shortly be received from the governor of New Zealand, together with particulars respecting any claims of other American citizens.

I have the honor to be, etc.,

J. PAUNCEFOTE,  
(For the Marquis of Salisbury.)

[Inclosure 5.]

*Lord Salisbury to Mr. Phelps, October 7, 1887.*

FOREIGN OFFICE, *December 7, 1887.*

SIR: With reference to my note of the 29th of October last, relating to the land claims of Mr. W. Webster in New Zealand, I have the honor to transmit to you herewith a copy of a memorandum on the subject by the prime minister of the colony, which I have received through the secretary of state for the colonies.

I have the honor to be, etc.,

J. PAUNCEFOTE,  
(For the Marquis of Salisbury.)

[Inclosure 6.]

*Mr. Phelps to Lord Salisbury, October 10, 1887.*

LEGATION OF THE UNITED STATES,  
*London, December 10, 1887.*

MY LORD: With reference to your lordship's note of 7th instant, and to previous correspondence, I have the honor to acknowledge the receipt of the prime minister of New Zealand's memorandum on the subject of Mr. Webster's land claims in that colony, and I beg to acquaint your lordship that I have lost no time in transmitting the same to my Government.

I have the honor to be, etc.,

E. J. PHELPS.

SESS. II, 1887. NEW ZEALAND.

## WEBSTER'S LAND CLAIMS (MEMORANDUM ON), BY THE HON. SIR ROBERT STOUT.

[Presented to both houses of the general assembly by command of his excellency.]

*Memorandum on the claims of William Webster, subject of the United States of America, and on a report of the Committee on Foreign Relations of the Senate of the United States, dated 26th January, 1887.*

To his excellency the GOVERNOR, &c. :

The report on the petition of William Webster, brought up from the Committee on Foreign Relations by Mr. Morgan,\* and forwarded in the despatch No. 13, of the 22nd March, 1887, from the colonial office to his excellency the governor, contains many erroneous statements.

It will be well to state in brief form what the facts are regarding Mr. William Webster's claim. Mr. Webster was an early visitor to New Zealand, and, as he states, traded with the Maoris.

After the proclamation of sovereignty over New Zealand Mr. Webster made a claim for land.

At the time there was in existence a land-claim ordinance, containing the following provisions:

[New Zealand land-claimants ordinance, 4 Vict., No. 2.]

AN ORDINANCE to repeal within the said Colony of New Zealand a certain act of the governor and legislative council of New South Wales made and passed in the fourth year of the reign of her present majesty, and adopted under an ordinance of the governor and legislative council of New Zealand for extending the laws of New South Wales to the said colony of New Zealand, and which said act of the governor and council of New South Wales is intitled "An act to empower the governor of New South Wales to appoint commissioners with certain powers to examine and report on claims to grants of land in New Zealand," and also to terminate any commission issued under the same, and to authorize the governor of the colony of New Zealand to appoint commissioners with certain powers to examine and report on claims to grants of land therein, and to declare all other titles except those allowed by the Crown null and void.

[9th June, 1831.]

Whereas, by an act of the governor and legislative council of New South Wales and its dependencies, made and passed in the fourth year of the reign of her present majesty, intitled "An act to empower the governor of New South Wales to appoint commissioners with certain powers to examine and report on claims to grants of land in New Zealand," after reciting that, in various parts of the islands of New Zealand comprehended within the limits of the territory and Government of New South Wales, tracts or portions of land were claimed to be held by various individuals by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, or other titles, either mediately or immediately from the chiefs or other individuals of the aboriginal tribes inhabiting the same, and reciting that no such individual or individuals could acquire a legal title to or permanent interest in any such tracts or portions of land by virtue of any gift, purchase or conveyance by or from the chiefs or other individuals of such aboriginal tribes as aforesaid; and also—

Reciting that Her Majesty had, by instructions under the hand of one of Her Majesty's principal secretaries of state, dated the fourteenth day of August, one thousand eight hundred and thirty-nine, declared her royal will and pleasure not to recognize any titles to land in New Zealand which did not proceed from or were not or should not be allowed by Her Majesty; and after stating that it was expedient and proper to put beyond doubt the invalidity of all titles to land within the said islands of New Zealand founded upon such purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, or other titles from the same uncivilized tribes or aboriginal inhabitants of New Zealand, it was therefore in and by the said now-reciting act declared and enacted that all titles to land in New Zealand which were not or might not thereafter be allowed by Her Majesty were and should be absolutely null and void.

And the said now-reciting act then authorizes and empowers the said governor of New South Wales to issue one or more commission or commissions, and

\* For resolutions of Senate and report see Appendix B, *post*, page 36.

thereby to appoint commissioners, who should have full power and authority to hear, examine, and report on all claims to grants of land in New Zealand, with certain other powers and provisions in the said act contained:

And whereas the said governor of New South Wales, under and by virtue of the said act, did issue his commission, bearing date under the seal of the said colony of New South Wales the thirtieth day of September, in the year of our Lord one thousand eight hundred and forty, thereby appointing certain commissioners, with power to hear, examine, and report on all claims to grants of land in New Zealand: and the said commissioners appointed therein did proceed to hear and examine certain of such claims, but have not as yet reported thereon, and other of the like claims have lately been referred to the said commissioners by the said governor of New South Wales;

And whereas since the appointment of the said commissioners the islands of New Zealand have been separated from the Government of New South Wales and erected into a colony by Her Majesty's royal charter, and it is therefore expedient and necessary that the said act of the governor and legislative council of New South Wales and its dependencies should be repealed, and the said commission so issued by the said governor thereof determined;

And whereas it is expedient and proper that a local ordinance for the same general purposes, intended to be provided for by the said in part recited act of the governor and council of New South Wales, together with such other enactments applicable to the altered circumstances of the colony of New Zealand, should be enacted by the governor and legislative council of the same:

1. [The New South Wales Act, 4 Vict., No. 7, repealed. Commission determined.]

All titles to land in New Zealand absolutely null and void except allowed by Her Majesty. Not to affect land purchased of or held under Her Majesty.

2. And whereas it is expedient to remove certain doubts which have arisen in respect to titles of land in New Zealand: Be it therefore declared, enacted, and ordained:

That all unappropriated lands within the said colony of New Zealand, subject, however, to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said colony, are and remain Crown or domain lands of Her Majesty, her heirs and successors, and that the sole and absolute right of preemption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, her heirs and successors, and that all titles to land in the said colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are, and the same shall be, absolutely null and void:

Provided, and it is hereby declared that nothing in this ordinance contained is intended to or shall affect the title to any land in New Zealand already purchased from Her Majesty's Government, or which is now held under Her Majesty.

Governor may appoint commissioners to hear, examine, and report on claims to grants of land in New Zealand.

3. And whereas Her Majesty hath, in the said instructions, been pleased to declare Her Majesty's gracious intention to recognise claims to land which may have been obtained on equitable terms from the said chiefs or aboriginal inhabitants or inhabitant of the said colony of New Zealand, and which may not be prejudicial to the present or prospective interests of such of Her Majesty's subjects who have already resorted or who may hereafter resort to and settle in the said colony:

And whereas it is expedient and necessary that, in all cases wherein lands are claimed to be held by virtue of any purchase, conveyance, lease, agreement, or any other title whatsoever from the said chiefs or tribes of any aboriginal inhabitants or inhabitant whomsoever of the said colony of New Zealand, an inquiry be instituted into the mode in which such claims to land have been acquired, the circumstances under which such claims may be and are founded, and also to ascertain the extent and situation of the same:

Be it therefore enacted and ordained, that it shall and may be lawful for the governor of the said colony of New Zealand, and he is hereby authorised and empowered, to issue one or more commission or commissions and thereby to appoint commissioners, who shall have full power and authority under the same, to hear, examine, and report on all claims to grants of land in virtue of any of the titles aforesaid in the said colony of New Zealand; and each of such commissioners shall, before proceeding to act as such, take and subscribe before a judge of the supreme court of New Zealand, or before such person as the governor or chief-justice for the time being shall, in writing, appoint for that purpose, the oath set forth in the schedule to this act annexed, marked A, which oath shall be recorded in the office of the colonial secretary of the said colony.

Commissioners to be guided by the real justice and good conscience of the case.

6. And be it enacted and ordained that, in hearing and examining all claims to grants as aforesaid and reporting on the same, the said commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities, and shall direct themselves by the best evidence they can procure or that is laid before them, whether the same be such evidence as the law would require in other cases or not; and that the said commissioners shall in every case inquire into and set forth, so far as it shall be possible to ascertain the same, the price or valuable consideration, with the sterling value thereof, paid for the lands claimed to any of the said chiefs or tribes, or any aboriginal inhabitants or inhabitant of the said colony of New Zealand, as well as the time and manner of the payment, and the circumstances under which such payment was made, without taking into consideration the price or valuable consideration which may have been given for the said lands by any subsequent purchaser or to any other person or persons save such chiefs or tribes or aboriginal inhabitants or inhabitant as aforesaid.

And shall also inquire into and set forth the number of acres which such payment would have been equivalent to, or according to the rates fixed in a schedule marked B annexed to this ordinance:

And if the said commissioner, or any two of them, shall be satisfied that the person or persons claiming such lands or any part thereof is or are entitled, according to the declaration of Her Gracious Majesty, as aforesaid, to hold the said lands or any part thereof, and to have a grant or lease thereof made and delivered to such person or persons under the great seal of the said colony, they, the said commissioners, shall report the same and the grounds thereof to the said governor accordingly, and shall state whether the claim or claims reported on is or are original or derivative, with the name or names of the party or parties to whom the grant or lease should issue: and shall set forth the situation, measurement, and boundaries by which the said lands or portions of land shall and may be described in every such grant or lease, so far as it shall be possible to, and they conveniently can, ascertain the same.

Provided, however, that no grant of land shall be recommended by the said commissioners which shall exceed in extent two thousand five hundred and sixty acres, unless specially authorized thereto by the governor with the advice of the executive council, or which shall comprehend any headland, promontory, bay, or island that may hereafter be required for any purpose of defence, or for the site of any town or village reserve, or for any other purpose of public utility, nor of any land situate on the seashore within one hundred feet of high-water mark.

Provided, also, that nothing herein contained shall be held to oblige the said governor to make and deliver any such grants as aforesaid, unless his excellency shall deem it proper so to do.

Certain lands not to be recommended by commissioners for grants.

7. Provided nevertheless, and be it enacted and ordained, that the said commissioners shall not propose to grant to any claimant whatsoever any land which may, in the opinion of the majority of the said commissioners, or of the majority of the commissioners appointed to investigate the demand of such claimant, be required for the site of any town or village, or for the purpose of defence, or for any other purpose of public utility, nor shall they propose to grant to any individual any land of a similar character which they may be directed to reserve by the governor of New Zealand; but that, in every case in which land of such description would otherwise form a portion of the land which the commissioners

would propose to grant to the claimant, they shall in lieu of such land propose to grant to him or her a compensation in such quantity of other land as they, the said commissioners, or the majority of them, shall deem an equivalent for every acre or part of an acre so required to be reserved either for the site of a village or township, or for the purpose of defence, or for any other purpose of public utility as aforesaid.

8. [Commissioners' meetings.]

9. [Powers of commissioners to examine witnesses.]

10. [Person summoned not appearing, or refusing to give evidence, may be apprehended under warrant of commissioners, and punished by fine or imprisonment.]

11. [Salaries to be paid to commissioners.]

12. [Fees to be taken by commissioners on account of the Government.]

Saving the right and prerogative.

13. Provided always, and be it declared and ordained, that nothing in this ordinance contained shall be deemed in any way to affect any right or prerogative of Her Majesty, her heirs or successors.

#### SCHEDULE A.—[COMMISSIONERS' OATH.]

#### SCHEDULE B.

Period when the purchase was made.	Per acre.	
	s. d.	s. d.
From 1st January, 1815, to 31st December, 1824.....	0 6	0 0
From 1st January, 1825, to 31st December, 1829.....	0 6	0 8
From 1st January, 1830, to 31st December, 1834.....	0 8	1 0
From 1st January, 1835, to 31st December, 1836.....	1 0	2 0
From 1st January, 1837, to 31st December, 1838.....	2 0	4 0
From 1st January, 1839, to 31st December, 1839.....	4 0	8 0

And 50 per cent above these rates for persons not personally resident in New Zealand, or not having a resident agent on the spot.

Goods when given to the natives in barter for land to be estimated at three times their selling price in Sydney at the time.

#### SCHEDULE C.—[Fees to be received by the said commissioners.]

The above ordinance was almost a literal transcript of the act of New South Wales, 4 Vict., No. 7, passed on the 4th August, 1840, but which became inoperative by reason of the severance of New Zealand from New South Wales in the same year. Under the last-named act Sir George Gipps, governor of New South Wales, appointed Colonel Godfrey and Captain M. Richmond, of H. M. 96th Regiment of Foot, to be two of the first commissioners; on the passing of the New Zealand ordinance. Governor Hobson renewed their appointment; and the confirmation of such appointment by the secretary of state was published in the New Zealand Gazette on the 5th April, 1843.

#### THE FIRST COMMISSION.

Commissioners Godfrey and Richmond formed what is generally called the first commission. The one or other of them visited the locality of each claim, and took the evidence on oath of the claimant and his witnesses, and of any natives either for or in opposition to the claimant at the place of their respective residences in different parts of the colony. The evidence was always taken down in the handwriting of the commissioner who received it, and when signed by the

witness was countersigned by the commissioners, with the date of the day when the evidence was taken. The commissioners afterwards met at headquarters and agreed upon a separate or joint report in each case, as the circumstances might seem to require.

Many claims which had been sent in to the colonial secretary, Sydney, for adjudication, and had been notified in the New South Wales Gazette, were subsequently decided by the commissioners under the New Zealand ordinance. These claims had been numbered consecutively as cases in the order of their being sent in at Sydney, and where several claims were received from the same individual they were numbered collectively as one case, the several claims therein bearing the same number with a distinguishing alphabetical letter annexed. Two hundred and eighty of these cases were gazetted in Sydney, and the same system of numbering was continued in New Zealand in respect of all subsequent cases received in New Zealand, until the total number of cases amounted to 459.

The first commission concluded its labors by reporting on all the claims referred to it. Major Richmond, on the 8th March, 1844, was appointed superintendent of the southern division of New Zealand, and Colonel Godfrey returned to England. Mr. William Spain was also a commissioner contemporaneously with the first commission, but, as his labors were almost exclusively limited to the investigation of claims arising out of the New Zealand Company's transactions, he is not included in the first commission within the meaning of this document.

In the year 1844 an ordinance in amendment of the above-recited ordinance was passed, giving to a single person the powers granted to two commissioners under the ordinance of 1841. This was called "The land claims ordinance, 1844, Session III No. 3;" and, Mr. Robert Appleyard FitzGerald being appointed, on the 25th March, 1844, sole commissioner thereunder, he formed what is herein called the second commission.

The reports of the commissioners were inconclusive, as they had to be confirmed by the governor, who also had the power of review in any case which he might think special. As a fact, Governor Fitzroy confirmed only one report of the first commission on Webster's claims, the one in case No. 3051, all the reports being sent to the second commission for reconsideration, with a view to making enlarged awards, as will appear hereafter.

With these remarks in explanation, the following narrative of the proceedings in relation to Webster's claims will be better understood.

The following notifications to foreigners in relation to bringing forward their claims to land for adjudication by the commissioners had from time to time been published in the New Zealand Gazette:

*Notification to foreigners to bring forward their claims.*

[Extract from the New Zealand Government Gazette, Kororareka, Bay of Islands, 12th February, 1841.]

COLONIAL SECRETARY'S OFFICE, Russell, 9th February, 1841.

His excellency the lieutenant-governor directs it to be notified that all persons not the subjects of Her Britannic Majesty, Queen Victoria, who may have purchased land from the aborigines within any of the islands of New Zealand previous to the 30th day of January, 1840, are hereby requested to forward a copy of their claims to the colonial secretary's office at Auckland on or before the 1st day of June next.

By his excellency's command.

WILLOUGHBY SHORTLAND.

[Extract from the New Zealand Government Gazette, Auckland, No. 14, 20th October, 1841, page 86.]

His excellency the governor has been pleased to direct it to be notified, for the information of foreigners claiming land in New Zealand by purchase from the natives prior to the proclamation issued by his excellency Sir George Gipps, bearing date the 14th day of January, 1840, that by a dispatch from the right hon. Her Majesty's principal secretary of state for the colonies, it is ordered that all claims, whether British or foreign, be investigated and disposed of by the commissioners appointed for that purpose. Such foreigners, therefore, as have not

already forwarded the particulars of their claims to this Government are required to send them to this office without delay.

These particulars should set forth the precise situation of the land claimed, its extent and boundaries, and the names of the native sellers, and the consideration paid to them, and, in case of the claims being derivative, the names of the intermediate possessors of the land and of the original purchaser, and the consideration given by him to the natives.

By his excellency's command.

WILLOUGHBY SHORTLAND.

The first notification received from Mr. Webster in relation to his claims was as follows:

*Mr. Webster to the Colonial Secretary, New Zealand.*

AUCKLAND, 1st May, 1841.

SIR: I have the honor to enclose, for the information of his excellency the governor, a copy of a letter addressed by my solicitors, Messrs. Chambers and Holden, to the colonial secretary of New South Wales, respecting certain lands in New Zealand alleged to have been purchased from me by the Messrs. Abercrombies and others, but which purchase has never been completed.

I have, etc.,

WM. WEBSTER.

The COLONIAL SECRETARY, etc., *New Zealand.*

[Enclosure.] \*

*Mr. Webster to the Colonial Secretary, Sydney.*

SYDNEY, March, 1841.

SIR: With reference to the claims to land at New Zealand advertised in the Government Gazette in the notices of that date\* and sections referred to in the margin (Cases Nos. 28, 29, 29A, 29B, 29D, 30, 31, 32, 80, 83, 93), or any other claims of like nature purporting to be derived by purchase from me by any of the following persons, viz, Wm. Abercrombie, Peter Abercrombie, Charles Abercrombie, John Mackay, J. Nagie, Munro, I have the honour to enter my respectful caveat against them on the ground that the purchase-money has never been, in fact, paid me. The deeds I receipt (signed) were completed by me on the assurance that credit for the several amounts of purchase-money should be given me in the books of Messrs. Wm. Abercrombie and Co. This engagement has never been fulfilled, and I have been compelled to commence a suit in chancery, which is now pending in the Supreme Court, to compel them either to pay me the price or to set aside the sale. In the mean time, I respectfully request that no grant may issue upon the applications referred to.

I have, etc.,

WM. WEBSTER,

By his attorneys, D. CHAMBERS AND HOLDEN.

Address to the care of my solicitors, D. Chambers and Holden.

*Mr. Webster to Mr. Commissioner Richmond.*

HAURAKI, NEW ZEALAND, 1st July 1843.

SIR: I hereby withdraw my protest, dated Sydney, March, 1841, with reference to land claimed by Messrs. Abercrombies, McKay, Munro, and others, as the matter has been settled.

Yours, etc.,

WM. WEBSTER.

Major RICHMOND.

\* No date given in the original. The Gazettes referred to are dated Sydney, 9th and 23rd March, 1841.

Mr. Webster first submitted his own claims for examination by a letter to the colonial secretary, New Zealand, dated the 20th July, 1841, which, together with the answer returned to him and his own reply, are hereunder next printed :

*Mr. Webster to the Colonial Secretary, New Zealand (bringing forward his land claims).*

COROMANDEL HARBOUR, 20th July, 1841.

SIR: I have sent seven copies of titles to land and seven\* statements of purchases, which I beg you will lay before the commissioners; for *examination only*. I have sent all my claims to land in this country before the United States Government, by the advice of the American consul of Sydney, and I trust his excellency Governor Hobson will not suffer any of my lands to be interfered with until the question is settled. I have been a resident in New Zealand for seven years, and have expended a large sum of money and undergone a great deal of trouble and hardships.

I am willing to come forward and prove all my purchases; but I trust that I shall be allowed time to do it, for I am very busy now with ships, and am under heavy penalties for the fulfilments of my agreement, and I find it will take a long time to get all the natives and witnesses to my purchases of lands together, and the expense will be very great. I find myself already at a great loss, and it appears to me that I am to be put to much more, and I do not know who to look to for it. I trust, when my claims for purchases to land (in this country) are examined, that they will prove to be all well understood by them that hear them, and it was all bought before that any government was formed here; and I further consider that all I have has been dearly earned, and I trust that, before I am dispossessed of any of it, it will be proved who has the best right to it.

Hoping that I have not made any unjust remarks,  
I have, etc.,

WM. WEBSTER.

*The Colonial Secretary to Mr. Webster (requiring him to declare whether he claims land as a British or foreign subject).*

COLONIAL SECRETARY'S OFFICE,  
Auckland 7th August, 1841.

SIR: I have had the honour to receive and lay before his excellency the governor your letter of the 20th ultimo, transmitting copies of titles of claims to land in New Zealand, and am instructed to acquaint you that you must distinctly state whether you claim the land as a British or American subject. If the former, your case will take the course the law prescribes; if the latter, your claims must depend upon the decision which may be arrived at by the joint consent of both Governments. The governor further directs me to inform you that in seeking assistance from a foreign government you must relinquish all the rights of a British subject, such as the ownership of a British vessel, which you are now understood to possess; but, if the claims be lodged as a British subject, his excellency will consent to their being laid before the commissioners in the usual way.

I have, etc.,

WILLOUGHBY SHORTLAND.

Mr. WILLIAM WEBSTER,  
Coromandel Harbour.

*Mr. Webster to the Colonial Secretary (in reply to the foregoing).*

COROMANDEL HARBOUR, 3rd October, 1841.

SIR: In reply to yours concerning my claims to land, I wish my claims to be laid before the commissioners, and am willing to take my chance with all others. But I trust that they may be left until the last, for it will put me to a serious inconvenience to attend to them now.

I have, &c.,

WM. WEBSTER.

\* Numbered by the commissioners as cases Nos. 305 to 305F.

*Memorandum for the Governor.*

The information furnished regarding these claims is sufficiently full to enable them to be referred for investigation. It appears from Mr. Webster's letter of July that these are only a part of his claims—he mentions twenty-seven as the total number—but states that the documents referring to the other claims are mislaid.

30th October.

WILLOUGHBY SHORTLAND.

*Minute by Governor.*

Let Mr. Webster's claims be submitted in the usual way.  
2nd November, 1841.

W. HOBSON.

*Mr. Webster's claims referred to commissioners.*

Cases Nos. 305 to 305M. William Webster, of Coromandel Harbour, claimant. Referred to the commissioners appointed under the ordinance of the governor and council, 4 Victoria, No. 2.

Colonial Secretary's Office, Auckland, N. Z., 18th November, 1841.

WILLOUGHBY SHORTLAND.

[Notification of Mr. Webster's claims being referred to the commissioners published in the New Zealand Gazette, No. 19, 24th November, 1841, pages 123, 124.]

From the foregoing correspondence no other inference can be drawn but that Mr. Webster intended to have his claims heard as those of a British subject; and,

*Firstly*, That the governor so interpreted his intention is apparent from the minute of the 2d November, 1841, where, in directing Mr. Webster's claims to be submitted in the usual way, he adopts the course and uses the identical language which the colonial secretary, in his letter of the 7th August, informs Mr. Webster would be adopted if he advanced his claims as a British subject:

*Secondly*, Mr. Webster, in his reply of the 3d of October, where he expresses his wish that his claims should be laid before the commissioners, requests that very course to be adopted which the colonial secretary informed him would be adopted if he advanced his claims as a British subject:

*Thirdly*, Mr. Webster appeared before the commissioners' court, and gave his evidence on oath in respect of each claim, without protest, after his claims had been notified in the usual way, and never asserted any exceptional claim as an American citizen; and also he accepted the awards in each claim, and the Crown grants issued in virtue of the said awards:

*Fourthly*, Mr. Webster did not relinquish the rights of a British subject, such as the ownership of a British vessel, which he possessed, and which in the aforesaid letter of the colonial secretary he was informed he would be required to do if he advanced his claims as a foreigner.

It is to be especially noted here that, although Mr. Webster's letter of the 20th July, 1841, to the colonial secretary, wherein he advances his claims as an American citizen, has been submitted to the Senate of the United States, and is referred to in the report of the committee of the Senate (*post*, p. 41), yet no evidence appears of Mr. Webster having submitted to the Senate either the colonial secretary's letter of the 7th August or his own reply thereto of the 3d October, 1841. From this surprising omission I can not but conclude that it was an act of willful disingenuousness on Mr. Webster's part, done for the purpose of suppressing all evidence which might be adduced to prove that he advanced his claims before the land claims commissioners as a British subject, and not as an American citizen.

The proceedings of the first commission in relation to each of Mr. Webster's claims, and the several awards made therein, were as follows:

CASE NO. 305.—*William Webster, of Coromandel Harbour, claimant.*

(250) Two hundred and fifty acres, more or less, situated at Coromandel Harbour. Bounded on the southwest by the outlet at the head of Coromandel Harbour, and extending along the beach to the northeast to a marked tree. Alleged to have been purchased from the native chief Tawaroa and others in 1837. Consideration given to the natives: Merchandise to the value of £208. Nature of conveyance: Deed in favour of claimant.

#### REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305, they are of opinion that William Webster made a bona fide purchase from the native chiefs Arakuri, Tavarou, and others on the 4th June, 1837, of a tract of land called Makariri, thus described: situated on the north side of Coromandel Harbour. Commencing at a small passage called Wenuakura, running along to a marked tree by a fresh-water creek a little to the eastward of the beach called Tehauha, and thence across the neck in a northerly course to the low-water mark: including the whole of the neck to the marked tree. The supposed contents, 250 acres. The payment made to the natives for this land appears to have been on the 4th June, 1837: Cash, nil; goods, £114 12s. Sydney prices  $\times 3 =$  £343 16s. A deed of sale was executed by the above-named chiefs and others, and Arakuri has admitted the payment they received, and the alienation of the land. The execution of the deed and payment have been proved by Henry Downing. The commissioners therefore respectfully recommend that a grant for the above-described land should be issued to William Webster, his heirs and assigns, for ever, excepting 100 feet from high-water mark. The claimant states in evidence that he has sold and transferred one-half of the land described in this case to Henry Downing, and requests that a grant from the Crown may be issued to him for the quantity; but, William Webster having been awarded the maximum grant of 2,560 acres, none can be recommended to Henry Downing.

The land claimed by J. C. Conway in case 266A being likewise a portion of this claim, no grant can be recommended to him.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

Dated at Wellington, this 18th day of December, 1843.

#### EVIDENCE.

HAURAKI, THAMES, *1st July, 1843.*

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court called Makariri, situated on the north side of Coromandel Harbour, containing about 250 acres, and bounded as follows: Commencing at a small passage called Wenuakura, running along to a marked tree by a fresh-water creek a little to the eastward of the beach called Tehauha, and thence across a neck in a northerly course to the low-water mark, including the whole of the neck to the marked tree. I purchased this land on the 4th of June, 1837, from the native chiefs Arakuri, Tawaroa, and others for the goods specified on the back of the deed, which I gave at the time the deed was signed. I have expended in buildings and improvements on this property about £200, and I have had possession and resided on it occasionally for the last six years. I have sold and transferred one-half of this land to Henry Downing, who claims through me. This claim has never been disputed by either European or native since I made the purchase.

WM. WEBSTER.

Sworn before me this 1st day of July, 1843.

M. RICHMOND.

William Webster, being re-examined and duly sworn, states: I wish to alter my evidence given on the 1st July, and to have the land that may be awarded on this case made out in my name and that of Henry Downing, to be divided in equal shares, instead of Mr. Downing deriving through me.

WM. WEBSTER.

Taken in court before me this 4th day of July, 1843.

M. RICHMOND.

William Webster, of Coromandel Harbour, being duly sworn, resumes his evidence and states: The land described in Case No. 266A, J. C. Conway, forms a part of the land in this claim, but I do not recollect making any transfer of it to him. I received no payment from him, and I do not acknowledge his claim. I recollect giving Mr. Conway permission to build a house on the land, but certainly did not intend to convey it to him, or that he should sell or make a claim for it.

WM. WEBSTER.

Sworn before me this 5th day of July, 1843.

M. RICHMOND.

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CASE NO. 305A.—*William Webster, of Coromandel Harbour, claimant.*

(600) Six hundred acres, more or less, being part of the island which forms Coromandel Harbour. Bounded on the northeast by the outlet at the head of the harbour, and on the southwest by a large rock on a beach called Tawiti. Alleged to have been purchased from the native chiefs Tawaroa, Arakuri, and others, in 1836. Consideration given to the natives: Merchandise and cash to the value of £260. Nature of conveyance: Deed in favour of claimant.

#### REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305A, they are of opinion that William McLeod made a bona fide purchase from the native chiefs Arakuri, Tawaroa, and others, on the 8th day of December, 1836, of a tract of land thus described: Half of the island called Wanganui, which forms Coromandel Harbour. Commencing at a rock called Te Pirau, on the beach called Tawiti, and running from the said rock northwest by west to the opposite shore, and in continuation to the northeast point. The supposed contents, 250 acres. The payment made to the natives for this half of the island appears to have been on the 8th of December, 1836: Cash. nil; goods, £94 14s. 6d. Sydney prices  $\times 3 =$  £284 3s. 6d. A deed of sale was executed; and the execution of the deed and payment have been proved by Henry Downing. The commissioners therefore respectfully recommend that a grant for the above-described land should be issued to William Webster, his heirs and assigns, forever, excepting 100 feet from high-water mark. The claimant states in evidence that he has sold one-half of the land described in this case; but, the maximum grant of 2,560 acres having been awarded to William Webster, no grant can be recommended in favour of Peter Abercrombie, the purchaser. This island was divided between William McLeod and William Webster, when their partnership was dissolved in 1837.

Dated at Wellington, this 18th December, 1843.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

#### EVIDENCE.

HAURAKI, THAMES, 1st July, 1843.

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court, being one-half of the island which forms Coromandel Harbour, called Wanganui, containing about 250 acres—my half—the whole island being about 500 or 600 acres. I purchased this island, and paid for it conjointly with William McLeod, on the 8th December, 1836, from the native chiefs Krakuri, Tawaroa, and others, for the goods specified in the deed, which includes the payment for the whole island. William McLeod and myself took separate deeds for our portions of the island. My boundaries commence at a rock called Te Pirau, on the beach called Tawiti, and running from the said rock northwest by west to the opposite shore, and in continuation to the northeast point. These boundaries do not interfere with those given in Mr. Walsh's evidence in Case 236. The payment was given at different periods: the latest was in the year 1838. There has been an expense of about £1,000, laid out in buildings and improvements on this property. I have sold and transferred half of my share of this island to Mr. Peter Abercrombie, and given him a deed

of transfer. I wish the grant for this land to be made out conjointly in my name and that of Mr. Peter Abercrombie. The rest of the natives who signed the deed and sold the island I can not produce to the court to give evidence, as they are gone to the south; but Arakuri was the principal seller and chief of the party.

WM. WEBSTER.

Sworn before me this 1st day of July, 1843.

M. RICHMOND.

CASE NO. 305B.—*William Webster, of Coromandel Harbour, claimant.*

(1,500) Fifteen hundred acres, more or less, situated on the River Thames. Bounded on the south by a marked tree, and on the north by a tree. Alleged to have been purchased from the native chiefs Patupo, Wakare Iru, and others; in 1839. Consideration given to the natives: Merchandise to the value of £90. Nature of conveyance: Deed in favour of claimant.

REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305B, they are of opinion that William Webster made a bona fide purchase from the native chiefs Te Ngarara, Taharoku, and others, on the 23rd November, 1839, a tract of land called Mangemangeroa, situated on the River Thames. The supposed contents, 1,500 acres. The payment made to the natives for this land appears to have been on the 23rd of November, 1839: Cash, nil; goods, £71 18s. 6d. Sydney prices  $\times 3 =$  £215 15s. 6d. A deed of sale was executed by the above-named chiefs and others, and the execution of the deed and payment have been proved by Lachlan A. McCaskill. The commissioners therefore respectfully recommend that a grant for 550 acres of the above-described land be issued to William Webster, his heirs and assigns, forever. William Webster states in evidence that he has sold and transferred the land described in this case to David E. Munro, who has claimed for it in No. 175; but, the maximum grant of 2,560 acres having been awarded to William Webster, no grant can be recommended in favor of D. E. Munro.

Dated at Wellington, this 18th day of December, 1843.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

EVIDENCE.

HAURAKI, THAMES, 3d July, 1843.

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court, situated on the river Thames, called Mangemangeroa, containing about 1,500 acres, and bounded as follows: On the east by the River Thames, running from a place called Mangemangeroa to a place called Otungaio, from thence to a small hill called Turua, from thence to a mount called Hineraupara, from thence to Mangemangeroa. I purchased this land on the 23d November, 1839, from the native chiefs Te Ngarara, Taharoku, and others, for the payment specified in the deed, which was given at the time I purchased the land. I have had timber cut off this land, but neither myself nor an agent have resided on it. I have sold and transferred this land to David E. Munro, who has claimed for it in Case No. 175; but I have no authority to act as his agent or make his claim for him. I am not aware that this claim has ever been disputed by either Europeans or natives since I made the purchase.

WM. WEBSTER.

Sworn before me this 3d day of July, 1843.

M. RICHMOND.

CASE NO. 305C.—*William Webster, of Coromandel Harbour, claimant.*

(2,500) Two thousand five hundred acres, more or less, situated at the head of Coromandel Harbour, known by the name of Taupiri. Alleged to have been purchased from the native chiefs Tawaroa, Arakuri, and others, 1837. Consideration given to the natives: Merchandise to the value of \$203. Nature of conveyance: Deed in favour of claimant.

#### REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in claim No. 305C, they are of opinion that William Webster made a bona fide purchase from the native chiefs Arakuri, Haurangi, and Tauawaroa, on the 30th January, 1837, of a tract of land called Taupiri, situate at the head of Coromandel Harbour. The supposed contents, 800 acres. The payment made to the natives for this land appears to have been on the 30th of January, 1837: Cash, nil; goods, £89 10s., Sidney prices  $\times 3 =$  £268 10s. A deed of sale was executed by the above-named chiefs, and the execution of the deed and payment have been proved by Henry Downing. The commissioners therefore respectfully recommend that a grant for the above-described land be issued to William Webster, his heirs and assigns, forever, excepting 100 feet from high-water mark. William Webster states in evidence that he has sold and transferred one-half of the land described in this case to Henry Downing; but the maximum grant of 2,560 acres having been awarded to William Webster, no grant can be recommended in favour of H. Downing.

Dated at Wellington this 18th day of December, 1843.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

#### EVIDENCE.

HAURAKI, THAMES, 3rd July, 1843.

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court. It is situated at the head of Coromandel Harbour, called Taupiri, containing about 800 acres, and is bounded as follows: In front by the east end of Coromandel Harbour, commencing at the foot of the hill and running a quarter of a mile to the eastward of the road or path called Muko, and extending a quarter of a mile to the westward of the said road, forming half a mile frontage, and running from the east corner front boundary northeast to the summit of a high range of mountains, and from the west corner north-northwest to the same range of mountains, the ridge of which mountains forms the back boundary. I purchased this land on the 30th of January, 1837, from the native chiefs Arakuri, Haurangi, and Tauawaroa, for part of the payment specified in the deed, and a small vessel which I gave for the remaining part. I commenced building the vessel for them in the year 1839, but it was not completed or given to them till 1841. I do not know the exact quantity of goods given at the time the deed was signed, but I think it was about one-third of those stated. About £150 has been expended on this land, and I have people residing on it for about six years. I have sold and transferred one-half of this land to Henry Downing, who claims through me as original purchaser. This claim has never been disputed by either Europeans or natives since I made the purchase.

WM. WEBSTER.

Sworn before me this 3rd day of July, 1843.

M. RICHMOND.

CASES NOS. 305D, 305E, 305F, AND 305L.—*William Webster, of Coromandel Harbour, Claimant.*

305D.—(1,000) One thousand acres, more or less, situated on the east side of Coromandel Harbour, known by the name of Waiau, commencing at a creek called Hokoe-awaka, running one mile to the south, about five miles to the east, and across the creek one mile to the north, and following the creek down about five miles to another small creek called Matawi. Alleged to have been purchased from the native chiefs Taniwa, Kitahi, Tokia, Pokaia, and others in 1836. Consideration given to the natives: Merchandise to the amount of £450. Nature of conveyance: Deed in favour of claimant.

- 305E.—An island called Aotea (Great Barrier), bearing northeast from Cape Colville about twenty miles. Alleged to have been purchased from three hundred of the principal chiefs of the Thames, in 1838. Consideration given to the natives: Cash and merchandise to the value of £1,200. Nature of conveyance: Deed in favour of claimant.
- 305F.—A small island on the left of the entrance to Coromandel Harbour, known by the name of Motutapuere. Alleged to have purchased from the native chiefs Tawaroa, Arakuri, and others, in 1836. Consideration given to the natives: Cash and merchandise to the value of £80. Nature of conveyance: Deed in favour of claimant.
- 305L.—(3,000) Three thousand acres, more or less, situated on the north side of the River Waihou. Commencing at a place called Wanaki, and running along the northern bank to a place called Waitowowo, from thence to a tree on the northeastern side of the wood, and from thence in a northerly direction to another tree on the outskirts of the wood, and from thence to Wanaka. Alleged to have been purchased from the native chief Tapunu and others, on the 24th November, 1839. Consideration given to the natives: Cash and merchandise to the value of £90. Nature of conveyance: Deed in favour of claimant.

## REPORT ON THE ABOVE FOUR CASES.

These claims being withdrawn by the claimant, no grant is recommended.

EDWARD L. GODFREY,  
*Commissioner.*

Coromandel Harbor, 17th June, 1844.

## EVIDENCE.

COROMANDEL HARBOR, 23rd May, 1844.

William Webster, the claimant, states: I withdraw the above claims.

WM. WEBSTER.

No. 305E being identical with No. 32.

E. L. GODFREY.

Taken in court, 23rd May, 1844.

E. L. GODFREY.

CASE NO. 305G.—*William Webster, of Coromandel Harbor, claimant.*

A portion of land (extent not stated). Bounded on the northwest by Point Rodney, on the southeast by Point Tawharunui, running from each point westerly to a mount called Pukomore; on the east by the sea; being about eight miles frontage, and running back eight miles.

Alleged to have been purchased from the native chiefs Kaukoti, Kupenga, Tanaroa, and others; date of purchase not stated. Consideration given to the natives: Merchandise to the value of £490. Nature of conveyance: Deed in favour of claimant.

## REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in claim No. 305G, they are of opinion that William Webster made a bona fide purchase from the native chiefs Ngauranga, Poroto, and others in the year 1839 of a tract of land situated at Point Rodney. The supposed contents, 10,000 acres. The payment made to the natives for this land appears to have been in January, 1839: Cash, nil; goods, £140 8s. Sydney prices,  $\times 3 =$  £421 4s. A deed of sale was executed by the above-named chiefs and others, and they have admitted the payment they received and the alienation of the land. The execution of the deed and the above payment have been proved by Lachlan A. McCaskill. The commissioners, therefore, respectfully recommend that a grant for 1,944 acres of the above-described land should be issued to William Webster, his heirs and assigns, for ever, excepting 100 feet from high-water mark.

Dated at Wellington, this 18th day of December, 1843.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

## EVIDENCE.

HAURAKI, THAMES, 1st July, 1843.

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court. It is situate at Point Rodney, and contains about 10,000 acres. It is bounded as follows: On the northwest by Point Rodney, on the southeast by Point Tawharanui, running from each point westerly to a mount called Pukemore; and on the east by the sea. I purchased this land in the latter end of 1838 or beginning of 1839, from the native chiefs Ngauranga, Poroto, and others, for the payment specified in the deed, with the exception of the blankets and muskets, which have not been given. The payment was made at different times; the latest, I am certain, was in the year 1839. I have expended about £200 in buildings and improvements on this property, and have had an agent residing upon it for three years. This purchase has not been disputed since I made it by either European or native, but some natives from the Bay of Islands made a claim in the year 1839, which I satisfied.

WM. WEBSTER.

Sworn before me this 1st day of July, 1843.

M. RICHMOND.

CASE NO. 305H.—*William Webster, of Coromandel Harbour, claimant.*

(3,000) Three thousand acres, more or less, situated near the River Tairua. Bay of Plenty, commencing one-quarter of a mile to the northward of a creek called Punaruku, and running along the beach one-quarter of a mile to the southward of another creek called Tekaro, and running southwest from each corner boundary to the summit of a hill called Pourewa. Alleged to have been purchased from the native chiefs Ko Hokianga, Ko Pehi, Nghaware, Tengahahu, on the 23rd November, 1839. Consideration given to the natives: Merchandise to the value of £450. Nature of conveyance: Deed in favour of claimant.

## REPORT.

The commissioner has the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305H, he is of opinion that a tract of land thus described, near the River Tairua, in the Bay of Plenty—commencing a quarter of a mile north of Creek Punaruku, and running along the beach a quarter of a mile to the southward of Creek Tekaro, and southwest from each boundary to a hill called Te Pourewa—was not purchased from the rightful owners. Therefore no grant is recommended.

Auckland, 29th August, 1844.

EDWARD L. GODFREY,  
Commissioner.

*Memorandum.*—Although the amount of payment to the natives is stated in deed No. 1 to be £450, the natives examined only admit to the value of £169 3s.; and, as the claimant has already received grants exceeding the maximum, no compensation for this admitted outlay, in land elsewhere, has been awarded.

## EVIDENCE.

HAURAKI, 6th July, 1843.

James Preece, of Hauraki, being duly sworn, states: That is my signature as witness to the deed before the court. I saw both the native chiefs sign; it was read and explained to them before they affixed their marks; they appeared to understand it and were satisfied. I saw all the payment specified on the back of the deed given to them at the time they signed, with the exception of the four last items, viz, two double-barrelled guns, £20 cash, 180 flasks of fine powder, and four double-barrelled guns. The payment I saw made was on the date of the deed, 23rd November, 1839. I do not know the land sufficiently well as to state if the boundaries are correctly described in the deed.

JAMES PREECE.

Sworn before me this 6th day of July 1843.

M. RICHMOND.

## COROMANDEL HARBOUR. 23rd May, 1844.\*

William Webster, being duly sworn, states: I claim a piece of land situate in the Bay of Plenty, near the River Tairua, commencing one-quarter of a mile north of a creek called Punaruku, and running along the beach one-quarter of a mile to the southward of the creek called Tekaro, and running southwest from each boundary to a hill called Te Pourewa. The supposed contents, 2,000 acres. I purchased it on the 23rd November, 1839, from the native chief Hokianga and others, and paid them £20 cash, and the goods stated in the copy of the deed of sale which I now exhibit and deposit with the court. The original deed has been mislaid, but I declare that the copy I deposit is a true copy. My possession of this tract has never been contested by either natives or Europeans. I have cut timber off this land for several years.

WM. WEBSTER.

Taken in court, 23d May, 1844.

E. L. GODFREY.

William Webster, being re-examined, states: I deliver in a list of the articles given to the natives in payment for this land, and admitted to have been received by them, as there are some errors in the list on the back of the deed.

WM. WEBSTER.

Taken in court, 29th May, 1844.

E. L. GODFREY.

Nghaware, a native chief not understanding the nature of an oath, but declaring to tell the truth, states: I am the son of Hokianga, and am deputed by him to give evidence about the sale of a piece of land by him to Mr. Webster some years ago. The land sold is at the Bay of Plenty, near the River Tairua, as described in the deed now read to me; and the payment received for it by Hokianga, Pehi, myself, and others, was the articles stated in the list I have just been shown. We had a right to sell this land, and we have never sold it to any other person.

HENRY T. CLARKE,  
*Interpreter.*

Taken in court, 29th May, 1844.

E. L. GODFREY.

Pohuhu, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: I am the son of Pehi, and am sent by him to give evidence regarding the sale by him and others of a piece of land to Mr. Webster some years ago, at the Bay of Plenty, near the River Tairua, as described in the deed now shown to me. The payment made for it is what is stated in the list now read to me. We had a right to sell this land, and have never sold it to any other person. Hokianga and Pehi are invited to a feast, which prevents their coming to give evidence about this purchase.

HENRY T. CLARKE,  
*Interpreter.*

Taken in court, 29th May, 1844.

E. L. GODFREY.

## OPPOSITION.

## TAURANGA, 29th July, 1844.

Tupaia, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: I and my party have a right in these lands, and we never sold them to Europeans. Neither Pehi nor Hokianga sent any message to us respecting the sale of land to Mr. Webster: but we heard of it from him, and we informed him that we had a claim. Pehi and Hokianga only claim through the same ancestors that we do—namely, Wakaruku. They had no fixed residence at Tairua, but, like ourselves, went there to fish. When we went for that purpose about two and a half years ago, a short time before the death of Whanake, we met Pehi and Hokianga. They then told us that they had sold the harbour of Tairua and the site of an old pa called Paku to Europeans, and proposed to give up to us the parts of the neighborhood unsold; but we did not consent. When Captain Wood came in the "Tortoise," Pehi and Hokianga came to Tauranga

\*Major Richmond being sent to Wellington, the investigation of this case was concluded by Colonel Godfrey.

to ask me and my party to go with them to drag out spars from this land for Captain Wood, in order that both parties might obtain a payment. We consented that some of our party who lived at Tuhua (Mayor Island) should go.

E. SHORTLAND, P. A.,  
*Interpreter.*

Taken in court, 29th July, 1844.

E. L. GODFREY.

Tumitai and Tangimoana, native chiefs, not understanding the nature of an oath, but declaring to tell the truth, give the same evidence in every respect as the above of Tupaia.

E. SHORTLAND, P. A.,  
*Interpreter.*

Taken in court, 29th July, 1844.

E. L. GODFREY.

List of articles on back of deed of sale of land at Tairua: 4 half-barrels gunpowder, £20; 6 quarter-barrels gunpowder, £15; 40 spades, £15; 50 gown patterns, £30; 1 tierce tobacco (500 lb.), £80; 1 lb. thread, 8s.; 12 adzes, £4; 20 tomahawks, £4; 24 axes, £6; 12 hoes, £3; 60 shirts, £12; 24 pairs drawers, £5; 40 cartridge-boxes and belts, £20; 12 pairs duck trousers, £3 12s.; 40 blankets, £40; 24 shawls, £24; 24 comforters, £8; 6 muskets, £12; 1 chest, £2; 1 chest, £2; 100 pipes, 10s.; 2 coats, £6; 4 superior double guns, £48; cash, £20; 8 casks canister powder, £24; 10 caps, £5; 40 large iron pots, £20; 20 superior tomahawks, £5; 20 English axes, £6; 10 large blankets, £10; total, £450 10s.

Amended list of articles proved to have been delivered: 6 muskets, 2 boxes, 200 pipes, 2 cloaks, 4 double guns, 100 cans powder, 20 iron pots, 10 caps, 20 tomahawks, 20 axes, 20 blankets, 10 casks powder, 20 spades, 40 gown pieces, 1 cask tobacco, 1 pound thread, 12 adzes, 12 drawers, 40 cartouche-boxes, 20 shawls, 20 comforters, £20 money.

WM. WEBSTER.

CASE NO. 305I—*William Webster, of Coromandel Harbour, claimant.*

(3,000) Three thousand acres, more or less, situated on an island called Waiheke. Bounded on the south by a creek called Nikiairanga; on the west by the sea; on the north by the north point; and on the east by the sea. Alleged to have been purchased from the native chiefs Ruinga, Pounoto, Honepa, and others, on the 8th May, 1838.

Consideration given to the natives: Merchandise to the value of £108 1s. Nature of conveyance: Deed in favour of claimant.

REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305I, they are of opinion that in 1836 and 1838 William Webster made a bona fide purchase from the native chiefs Ruinga and Kahukote and others of a tract of land in the island of Waiheke. The supposed contents, 3,000 acres. The payment made to the natives for this land appears to have been in May, 1838: Cash, £15; goods, £62 12s. Sydney prices  $\times 3 =$  £187 16s.; total, £202 16s. A deed of sale was executed by the above-named chiefs and others, and they have admitted the payment they have received and the alienation of the land. The commissioners, therefore, respectfully recommend that a grant for 1,187 acres of the above-described land should be issued to William Webster, his heirs and assigns, forever, excepting 100 ft. from high-water mark.

EDWARD L. GODFREY,  
M. RICHMOND,  
*Commissioners.*

Auckland, 1st July, 1843.

## EVIDENCE.

William Webster, being duly sworn, states: I claim a piece of land at Waiheke, in the Firth of the Thames. I purchased it in the years 1836 and 1838, from the native chiefs, Ruinga, Kahukoti, and others, and paid them for it with cash and goods stated in the deed. My possession of this land has never been disputed by the natives. Mr. Thomas Maxwell claimed a portion of it, but it was never decided. I have never sold any part of this land. The contents are about 3,000 acres.

WM. WEBSTER.

Taken in court, 19th June, 1843.

E. L. GODFREY.

Report confirmed by the governor, 5th July, 1843. W. S.

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CASE NO. 305J.—*William Webster, of Coromandel Harbour, claimant.*

(6,000) Six thousand acres, more or less, being an island called Ahuahu (Big Mercury Island), bearing southeast of Cape Colville, about 20 miles distant alleged to have been purchased from the native chiefs Kaweno, Ko Pariera, and others, on the 20th May, 1839. Consideration given to the natives: Merchandise to the value of £944. Nature of conveyance: Deed in favour of claimant.

## REPORT.

The commissioner has the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 305J, he is of opinion that on the 20th May, 1839, the claimant made a bona fide purchase from the native chiefs Mathew and others of a tract of land thus described: A small piece of the south end of the Island of Ahuahu (Big Mercury Island), bounded by a straight line from Momona to Waihi; and another small piece on the northeast coast of the said island, being from Poutiki to Taiwha-titi, from thence straight across to Takalakatea, and from the latter place straight across to Poutiki; excepting any portion of land in the above limits belonging to the native Kahe, the supposed contents unknown. Although the amount stated in the deed No. 1 is £948, the payment made to the natives for this land appears to have been only—cash, £60; goods, £218; total, £278. A deed of sale was executed by the above-named chiefs and others, and they have admitted the above payment of £278 received and the alienation of the part of the island as above described. The claimant having already received the maximum grant, no grant is recommended.

EDWARD L. GODFREY,  
*Commissioner.*

Auckland, 29th August, 1844.

## EVIDENCE.

*William Webster, Claimant.—Coromandel Harbour, 23rd May, 1844.*

William Webster, being duly sworn, states: I claim the island called Ahuahu or Big Mercury Island, bearing northeast of Cape Colville about twenty miles. I purchased it from the chief Kawena and others on the 20th May, 1839, and paid them about two-thirds of the goods stated in the deed and £60 in cash. For the rest of the articles they hold promissory notes from me. I exhibit the original deed of sale, and deposit a copy of it with the court. I have kept a station and stock upon this island ever since I purchased it, and have never been molested in my possession. I deliver a list of the articles given to the natives in payment, and which they will acknowledge to have received, the enumeration of articles in the deed being in some measure incorrect.

WM. WEBSTER.

Taken in court, 23rd May, 1844.

E. L. GODFREY.

Henry Downing, of Coromandel Harbour, being duly sworn, states: That is my signature as witness to the deed now shown to me. I saw the natives attach their marks to the deed after it had been explained to them, and I witnessed a

very large payment of goods and cash delivered to them by Mr. Webster; but I can not recollect the exact amount. The payment was principally made in May, 1839, when the deed was signed. Some articles were given to them afterward.

HENRY DOWNING.

Taken in court, 23rd May, 1844.

E. L. GODFREY.

Tokona, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: I was one of the chiefs who sold the northeast end of Ahuahu to Mr. Webster, and I agree to let it go to him. I only received one shirt as payment. I let go Piripi's share also, but without his permission—he has still a right to it. The part I sold is Parangatata.

HENRY T. CLARKE, *Interpreter*.

Taken in court, 29th May, 1844.

E. L. GODFREY.

Whaningatu, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: Some years ago I and my party sold to Mr. Webster the portion of Ahuahu which belongs to us, and we received the payment stated in the list now read to us. The land we sold belonged to us, and did not interfere with the land belonging to Kawharo and his party, which they have correctly described. Their land we did not sell.

HENRY T. CLARKE, *Interpreter*.

Taken in court, 29th May, 1844.

E. L. GODFREY.

Horeta, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: I am the brother of Whanui, who is dead. I know that he sold the portion of Ahuahu which he possessed to Mr. Webster, and that he received payment for it. He had a right to sell that part of the island. Huruhi, Tatamewhara, Oparia, and Tokokahia belonged to Whanui and Pehi; Waitapu belonged to Tararoa and others; Waioha belongs to Kahe.

HENRY T. CLARKE, *Interpreter*.

Taken in court, 29th May, 1844.

E. L. GODFREY.

#### OPPOSITION.

COROMANDEL HARBOUR, 15th June, 1843.\*

That native chiefs Piripi, Kawharo, and Kahe (not understanding the nature of an oath) declare they will tell the truth, and state: We, on behalf of ourselves and our party, oppose the sale of the Big Mercury Island, with the exception of a small piece at the south end, which was sold by the chief Mathew, the boundaries of which are Momona, running in a direct line to Waihi, on the opposite side of the island; this piece we do not dispute, as Mathew had a right to sell it. We knew of the sale of the island to Mr. Webster, and received at the same time a deposit of about 40lb. of tobacco and £5 in money. We agreed to sell our part of the island, and when this deposit was given us Mr. Webster promised to pay us afterwards for the land, but he has never done so. No exact payment was specified. We have often spoken to Mr. Webster about it, but he said he had nothing to pay us with till his ship arrived with goods.

*Answers to questions from the court.* We pressed him for payment till the governor came to New Zealand, when we gave over asking him. Mathew had only a right to the part he sold, and had no claim to our portion. The land belonged to us by descent for many generations. We signed a deed when we received the deposit; the reason we signed it was that Mr. Webster told us we should have more payment when he got it. We expected a great payment, as it is a large piece of land. We told Mr. Webster we expected a large payment. The deed we signed was not explained to us; the names of the persons who sold the island only were read to us. We did not know what we signed, and we now decidedly object to let our portion of the land go to Mr. Webster. By "the names of the persons who sold the island" we mean that Mathew's, ours, and those of our party who signed the deed when we received the deposit were read to us.

HENRY T. CLARKE, *Interpreter*.

Taken in court before me this 15th day of June, 1843.

M. RICHMOND.

\*Major Richmond being sent to Wellington, the investigation of this case was concluded by Colonel Godfrey.

The chief Mathew, not understanding the nature of an oath, declares he will tell the truth, and states: I sold a piece of the Big Mercury Island to Mr. Webster; it is situated at the south end. The boundaries are Momona, running in a direct line to Waihi, on the opposite side of the island. I received for this piece 2 casks of powder, 10 blankets, 12 cartouche-boxes, 12 spades, 12 handkerchiefs, 6 shirts, 3 gowns, 40 lb. of tobacco, and £1 8s. in money. I was satisfied with this payment, and agreed to let the land go to Mr. Webster for it. I sold no more than the land above described. I sold none that belonged to Piripi, Kawharo, Kahe, and their party. There was another piece (not very large) that I agreed to sell also to Mr. Webster; he promised to give me three double-barrelled guns, some jackets, and other things for it, which he has never done, and therefore I do not consent to let him have this part.

HENRY T. CLARKE, *Interpreter.*

Taken in court before me this 15th day of June, 1843.

M. RICHMOND.

COROMANDEL HARBOUR, 29th May, 1844.

Kawharo, Iona Ponaka, Karuhiruhi, Rawiri, Raha (chiefs) and Teti (a chieftainess), not understanding the nature of an oath, but declaring to tell the truth, state that the evidence formerly given (as above) by Piripi and Kawharo is correct; that they all oppose and deny the sale of the Island of Ahuahu (Big Mercury) to Mr. Webster; that they only received an earnest of the payment, and have never been paid since; that Mathew had only a right to sell from Momona to Waihi, the south end of the island, which they know he sold to Mr. Webster. The rest of the island belongs to us and our party, and we have not parted with any of it to Mr. Webster.

HENRY T. CLARKE, *Interpreter.*

Taken in court 29th May, 1844.

E. L. GODFREY.

The evidence of the above chiefs resumed: The boundaries of our land which we have not sold are from Tokokahukahu, along the southwest coast, to Huruhi; thence across the island to Poutoka, on the northeast coast; then along the coast to Waihi; then across the island from Waihi to Momona. The part to the south belongs to Mathew, and that to the northward of our land to Pehe and Waingata and their party.

HENRY T. CLARKE, *Interpreter.*

Taken in court 29th May, 1844.

E. L. GODFREY.

Rawiri and Teti re-examined, and state that in consideration of the deposit received by their party, although trifling, they consent to give Mr. Webster the land from Poutiki to Taiwhatiti, and thence across to Takaikatea, and thence to Poutiki. Kawharo has consented to this, and he will point out the boundaries of the land we give up.

HENRY T. CLARKE,  
*Interpreter.*

Taken in court 1st June, 1844.

E. L. GODFREY.

List of articles enumerated on back of deed of sale Ahuahu (Big Mercury) given as payment: Half-ton powder, £100; 200 blankets, £200; 8 doz. shirts, £16; 80 spades, £32; 80 hoes, £20; half ton tobacco, £200; 85 tomahawks, £13; 20 gross superior pipes, £12; cash, £60; 40 pairs drawers, £12; 20 pieces prints, £30; 15 superior double guns, £165; 30 blue caps, £15; 10 cloaks, £35; 17 muskets, £34; total, £944.

Amended list of articles proved to have been delivered: 10 kegs powder (500 lb.), 60 blankets, 8 doz. shirts, 40 spades, 40 hoes, 2 kegs tobacco (500 lb.), 20 tomahawks, £60 sterling, 20 pairs drawers, 20 pieces print, 4 double guns (superior), 5 cloaks (superior), 20 blue caps, 20 muskets.

WM. WEBSTER.

Received in court 23rd May, 1844.

E. L. GODFREY.

CASE NO. 305K.—*William Webster, of Coromandel Harbour, claimant.*

(80,000) eighty thousand acres, more or less, commencing at the mouth of a creek called Orua, on the left bank of the river Piako, from the mouth of the said creek running west to the summit of a hill called Maungakawa, and then south by west to the summit of a hill called Tukuenui, and then south by west to another hill called Pukemoki, and then south by west along the division line of the peak and Waikato land to a point due west from the western extremity of a low ridge of hills called Panahuau; then due east to the river Piako, and then following the Piako downwards to the mouth of the said creek Orua, at the commencement.

Alleged to have been purchased from the native chiefs Wane Kawa, Te Hoehoe, Te Waneponga, Te Weono, and others, on the 31st December, 1839. Consideration given to the natives: Cash and merchandise to the value of £1,195. Nature of conveyance: Deed in favour of the claimant.

## REPORT.

The commissioners have the honor to report, for the information of his excellency the governor, that, from the accompanying evidence taken in claim No. 305K, they are of opinion that William Webster made a bona fide purchase from the native chiefs Koenaki, Ware Ponga, and others, on the 31st December, 1839, of a tract of land situated on the west bank of the river Piako. The supposed contents, 80,000 acres. The payment made to the natives for this land appears to have been on the 31st December, 1839: Cash, £35; goods, £563 16s. Sydney prices  $\times 3$ , £1,691 8s.; total, £1,626 8s. A deed of sale was executed by the above-named chiefs and others. The execution of the deed and payment have been proved by Henry Downing. William Webster deposes to the resale and transfer of one-half of the land described in this case to Peter Abercrombie; also that claimed by the following persons: Henry Downing, Felton Mathew, and George Cooper, John Johnson, Vincent Wanostrocht, Jeremiah Nagle, and John Wrenn, Arthur Devlin, George Russell. But the maximum grant of 2,560 acres having been awarded to William Webster, no grant can be recommended in favour of any of these claimants. The commissioners, therefore, respectfully recommend that a grant for 2,560 acres of the above-described land should be issued to William Webster, his heirs and assigns, forever, excepting 100 ft. from high-water mark, and excepting the land belonging to the chief, Takapu.

Dated at Wellington, this 18th day of December, 1843.

M. RICHMOND,  
EDWARD L. GODFREY,  
*Commissioners.*

## EVIDENCE.

HAURAKI, THAMES, *3rd July, 1843.*

William Webster, of Coromandel Harbour, being duly sworn, states: I claim the land described in the deed before the court. It is situated on the west bank of the river Piako, and contains about eighty thousand acres. It is bounded as follows: In front by the river Piako, on the north side by the creek called Oura, on the south by Parawau, and on the back or west by a range of hills called Mangokawa, Pukenui, Pukemoke, and Panawau. I made the purchase of this land from the native chiefs Koenaki, Ware Tonga, and others, on the 31st December, 1839; that is, the deed was signed on that day, but I agreed for the land and made considerable payment before that time—viz., in the year 1838. I gave in payment all that is specified in the deed, and a great deal more which is not inserted. Nothing stated in the deed has been given after the date of it. I have expended about £200 in buildings and improvements on this purchase since I made it, and have had an agent residing upon it for two years. This claim has not been disputed by any European since I made the purchase: but I have heard lately that a chief named Takapu lays claim to a small part of it, for which I was not aware he had not been settled with, but which would have been the case had he been present. With respect to the opposition of the native Puru, it is incorrect, and I believe the man is out of his mind. I deny giving him any note of hand.

I have sold one-half of this land to Mr. Peter Abercrombie. Out of the remaining half I have sold and conveyed to the following persons, dividing it into

twenty shares, viz, five shares to Messrs. Mathew and Cooper, two and a half to Dr. Johnson, two and a half to Mr. Arthur Devlin, two to Mr. George Russell, one to Mr. Henry Dowling, half to Mr. Vincent Wanostrocht, half to Messrs. Jeremiah Nagle and John Wrenn, and six reserved to myself. These persons have claimed for what I sold them in the several cases opposite their names. I have given each of them deeds of transfer. I have nothing whatever to do with McCormack's claim on the west bank of the Piako, nor any interest in it; neither have I anything to do with the land claimed in Cases Nos. 96, 142, 178, and 223. These, I believe, derive from McCormack. I know nothing of Claims Nos. 28, 30, and 31, 71A, 80, 83, 93, 121, 138, 152, and 316. These claim through Mr. Peter Abercrombie, out of the half I sold him.

WM. WEBSTER.

Sworn before me this 3rd day of July, 1843.

M. RICHMOND.

CASE NO. 305M.—*William Webster, of Coromandel Harbour, claimant.*

(2,000) two thousand acres, more or less, situate on the southeastern side of the island of Waiheke, commencing at a point called Opatia, running north along the shore to a point called Tarawhanui, and from each of these points north-west by west to the northwest side of the island. Alleged to have been purchased from the native chiefs Ngake-te, Kupunga, Tuaruhi, and others, on the 8th May, 1838. Consideration given to the natives: Merchandise to the value of £108. Nature of conveyance: Deed in favour of claimant.

REPORT.

The commissioners have the honor to report for the information of his excellency, the governor, that, from the accompanying evidence taken in Claim No. 305M, they are of opinion that in 1838 William Webster made a bargain with the native chiefs Ruinga and Kotearohi of a tract of land in the island of Waiheke, and called Te Tarawhanui; the supposed contents, 3,500 acres. The payment made to the natives for this land appears to have been—cash, 10s.; goods, £79 10s.; total, £80, paid prior to 1840. Claimant has also promised to build a schooner, value £200, for the natives. A deed of sale was executed by the above-named chiefs and others, and they have admitted the payment they received and the alienation of the land upon condition of the payment being completed. It appears that the payment of this land has not yet been completed by the claimant; and such transactions having been forbidden by the proclamation of his excellency Sir George Gipps, dated the 14th of January, 1840, the claimant is not entitled to the usual grant; but as an outlay of £80 was made prior to the above date, the commissioner therefore recommends that a grant for eighty acres, being at the rate of one acre for each pound sterling expended, of any land of average value should be issued to William Webster, his heirs and assigns, forever, except 100 ft. from high-water mark.

Auckland, 1st July, 1843.

EDWARD L. GODFREY,  
*Commissioner.*

AMENDED REPORT.

The maximum grant of 2,560 acres having been awarded to the claimant, no grant is recommended.

Wellington, 16th December, 1843.

EDWARD L. GODFREY,  
M. RICHMOND,  
*Commissioners.*

## EVIDENCE.

William Webster, being duly sworn, states: I claim a piece of land at Waiheke, in the firth of the Thames, containing about 3,500 acres. I bargained for this land in the year 1838, and gave some goods then and an additional payment in 1839, and also in October, 1840; I have also given the natives a promissory note for a schooner valued at £200. I have conveyed two portions of this land—one to John Halls, and the other to Robert Girdwood; but I have not received the purchase money.

WM. WEBSTER.

Ruinga, a native chief, not understanding the nature of an oath, but declaring to tell the truth, states: Some years ago I and Kotearohi signed the deed now shown to me. We sold the land described in it to Mr. Webster, and we received 40 lb. of tobacco, 2 pairs of trousers, 10 shillings, 5 double-barrelled guns, 8 single-barrelled guns, 8 cartouche-boxes; and we have the promise of a schooner to complete the payment. We had a right to sell this land, and have never sold it to any other person. If the vessel is not given to me I shall not give up the land or consider it sold.

THOMAS S. FORSAITH, *Interpreter*.

Taken in court, 19th June, 1843.

E. L. GODFREY.

CASE NO. 32.—*William Abercrombie, Jeremiah Nagle, and William Webster and Co., claimants.*

(20,000) twenty thousand acres, more or less, viz, all that island called Aotea, or Big Barrier, lying in 36° 4' south latitude, 175° 40' east longitude, howsoever the said island or any part thereof is bounded, situated, known, or distinguished, or intended to be. Alleged to have been purchased by the present claimants on the 20th March, 1838, from the native chiefs Horeta, Urimibia, Kitabi, Te Mariri, I Ingare, I Maurie, E Rite, Tawa te Kune, I Ngabue, I Rukeroo, Taumara Huato Hua, Taru Whotu, Rukoo, Rupa Rupa, I Moona, Tau Toko, and Te Heru. Consideration: Various articles of merchandise to the amount of £1,140 sterling. Nature of conveyance: Deed to claimants, dated 20th March, 1838.

## REPORT.

The commissioners have the honour to report, for the information of his excellency the governor, that, from the accompanying evidence taken in Claim No. 32, they are of opinion that in 1838 the claimant made a bona fide purchase from the native chiefs, Horeta and others, of a tract of land thus described: Part of the island of Aotea, or the Great Barrier Island. The payment made to the natives for this land appears to have been, in March, 1838: Cash, £10; goods, £570 15s.; total, £580 15s. A deed of sale was executed by the above-named chiefs and others, and they have admitted the payment they received and the alienation of part of the island. The portion admitted to have been sold is the land lying north of the following boundaries, including the island of Kaikoura: Commencing at Akatarere, on the west coast, a little north of the small island Rangiahua, to Papakuri to the eastward; thence to Maungapiko; thence to the southernmost bay of the inner harbour; thence along the shore to a stream called Wairapi; following the windings of this stream, it then runs in an easterly direction to the summit of the range of hills; thence along the summit of said range northerly to Mount Hirakunata; thence, still proceeding in a northerly course, along the summit of the range of hills to Pairoa and Ohineuru on the south bank of the creek Wangapoua; thence along the same bank of Wangapoua to the sea; excepting from the above limits the land which belongs to Pukeroa, which is bounded in front by part of the inner harbour, on one side by the small stream Kaiaraara, on the other side by a place called Kotuka, and on the back by a place called Ongungu; and also excepting all the cultivations and set-

lements of the resident natives. The rest of the island, lying southwards of the above boundaries, does not appear to have been purchased from the rightful owners, the Chief Tara and his party, who alone of the sellers maintain any right to lands within this portion, having acknowledged to have received for their share only three pairs of blankets, and the opposition of Tamati Walker and Tarikirangi being even admitted by Tara to a considerable extent. The claimant having already received a maximum grant of 2,560 acres, no grant is recommended.

Coromandel Harbour, 10th June, 1844.

EDWARD L. GODFREY,  
*Commissioner.*

#### EVIDENCE.

COROMANDEL HARBOUR, 23rd May, 1844.

William Webster, being duly sworn, states: I claim, on behalf of myself, Jeremiah Nagle, and William Abercrombie, the island called Aotea, or the Great Barrier, or such portions of it as shall be admitted to have been sold by the natives. I made this purchase for myself and the above-named parties upon the 20th March, 1838, from the native chiefs Horeta, Uramoia, and others, and paid them £20 sterling in cash, and goods to the value of nearly £1,000. For some of the articles specified in the deed of sale as payment, but not yet delivered, the natives hold my promissory notes. I exhibit the original deed of sale, and deposit a copy of it with the court. It describes the purchase as being for the whole of the island, but some other natives have laid claim to the south-eastern part. The northern end, upon which mining operations have been commenced, has never been contested. I deliver a correct list of the articles given to the natives and admitted to have been received by them, as there are errors in that written on the back of the deed.

WILLIAM WEBSTER.

Received in court 23rd May, 1844.

E. L. GODFREY.

[Extracts from the minutes of the Executive Council, Tuesday, 18th June, 1844.]

His excellency submitted for the consideration of the council the land claim of Messrs. William Abercrombie, Jeremiah Nagle, and William Webster to the Barrier Island. His excellency stated that it appeared from the report of Mr. Commissioner Godfrey that the claimants had validly purchased a considerable part of the Barrier Island; but, as one of the parties, William Webster, has already had a large grant awarded to him upon other claims, the commissioner had not recommended any grant in respect of this claim to either of the said parties. His excellency, remarked that this appeared to him a case of extreme hardship; and, as he considered that great benefit would accrue to the colony by awarding those parties a grant of part of the Barrier Island for the purpose of enabling them to proceed with their mining operations, on which much capital had already been expended, he felt disposed, as this was a special case, to step out of the usual course. He would, however, be glad of the opinion of council on the following points:

First, whether any grant should be issued to Messrs. Abercrombie, Nagle, and Webster; and,

Second, whether the commissioner should be authorized to recommend an extension of any such grant beyond 2,560 acres.

After full consideration, council were unanimously of opinion that, under the peculiar circumstances of this case, a grant of part of the Barrier Island should be awarded to the claimants, and that the commissioner should be authorized to recommend an extension of the said grant beyond the usual maximum grant of 2,560 acres.

True extract.

J. COATES, *Clerk of Council.*

*Special award.*—A deed of grant to be issued to Messrs. William Abercrombie, Jeremiah Nagle, and William Webster for all that part of the Great Barrier

Island (Aotea) which Commissioner Godfrey herein reports to have been validly purchased by them.

18th June, 1844.

ROBERT FITZROY, *Governor*.

*Memorandum of agreement.*—The joint claimants for a portion of the Island Aotea (or great Barrier Island), Messrs. William Abercrombie, Jeremiah Nagle, and William Webster, mutually agreed this day in this house to a division of their joint claim, as shown in a plan of the island produced by the said parties before the governor, the chief protector of aborigines, and the private secretary.

ROBERT FITZROY.

GEORGE CLARKE.

J. W. HAMILTON.

GOVERNMENT HOUSE, *Auckland*, 1st July, 1844.

NOTE.—Which plan was forthwith placed in the hands of the land commissioner (Mr. Fitzgerald), to be copied for reference, and on the back of three separate deeds.

1st September, 1844.

ROBERT FITZROY.

*Ultimate award.*—Grant to William Abercrombie for 8,119 acres; to Jeremiah Nagle for 8,070 acres; and to William Webster for 8,080 acres, issued 6th July, 1844; total 24,259 acres—for the whole of which W. S. Graham, of Auckland, on 29th December, 1854, obtained a new grant as transferee from the Bank of Australasia, in Sydney, to whom the said lands had been assigned.

## AMENDED GENERAL REPORT.

CLAIMS 305, 305A, 305B, 305C, 305G, 305I, 305K; *William Webster, claimant*.

AWARDED in case No. 305, 240 acres; case No. 305A, 250 acres; case No. 305B, 550 acres; case No. 305C, 800 acres; case No. 305G, 1,944 acres; case 305I, 1,187 acres; case 305K, 2,560 acres; total, 7,541 acres. To be reduced in the aggregate to the maximum grant of 2,560 acres.

Dated at Wellington this 18th day of December, 1843.

M. RICHMOND,

EDWARD L. GODFREY,

*Commissioners.*

*Memorandum.*—The following cases preferred by this claimant have not yet been investigated, namely—305D, 305E, 305F, 305H, 305J, and 305L. No grant has been recommended in case 305M.—M. R.

To explain this amended report, it is necessary to state that in 1842, the Land Claims Amendment Ordinance, Sess. II, No. 14, was passed and assented to by Governor Hobson.\* 25th February, 1842, whereby the limitation of the maximum of grants to 2,560 acres, fixed by the ordinance of 1841, was removed, and the commissioners were empowered to recommend grants exceeding the maximum area fixed by the ordinance of 1841.

This ordinance was disallowed by the Queen, and the notification of such disallowance was gazetted in the colony 6th September, 1843, by command of Lieutenant Shortland, R. N., the officer administering the Government, but it was in force in the colony from February, 1842, to September, 1843, and as the first commission had acted under it when making their earlier awards, it became necessary to annul these in consonance with the original ordinance of 1841, which had become revived in full force.

\* Captain Hobson, R. N., died 10th September, 1842, whereupon the colonial secretary, Lieutenant Shortland, became officer administering the Government until the arrival of Captain Fitzroy, R. N., who became governor 26th December, 1843, until 18th November, 1845, when Sir George Grey succeeded him.

Thus it happened that Webster's original award of 7,541 acres was reduced to a maximum area of 2,560 acres, and all the persons to whom he had sold his lands as fast as he had acquired them, at an average sum of twenty shillings per acre, for the purpose of extending his credit and making further purchases, were left without anything for their money, and without redress.

It may have arisen from some confusion in amending their awards as above mentioned, but it must here be remarked that the reports of the first commission on the four first claims are somewhat inconsistent, inasmuch as in each case the commissioners award to Webster the whole land claimed, notwithstanding his evidence that he had sold it or part of it, and then refused to recommend a grant to the derivative purchaser on the plea that Webster, the original claimant, had been awarded a maximum acreage. If they would not grant the land to the purchasers, why grant it to Webster, unless in the expectation that Webster would convey to the purchasers? At any rate the reports are not quite intelligible on this point, and required correction.

#### THE SECOND COMMISSION.

Governor Fitzroy, taking the case of these derivative purchasers from Webster into consideration, as also that of Webster's outstanding creditors, submitted the whole question of Webster's claims to his executive council, who recommended extended grants, as appears from the following minute:

[Extract from the minutes of the executive council.]

"WEDNESDAY, 10th April, 1844.

"Present: All the members.

\* \* \* \* \*

"His excellency next brought before the council the claims of William Webster, numbered as in the margin (305, 305A, 305B, 305C, 305G, 305I, 305K), amounting to 7,541 acres, as recommended by Commissioners Godfrey and Richmond. His excellency remarked that only 2,560 acres could be granted upon each claim without the express sanction of the governor, with the advice of the executive council, in accordance with the sixth clause of the Land Claims ordinance, and requested the opinion of the council whether the commissioners should be authorized to recommend an extension of the grant.

"The council, after hearing and deliberating on the case, advised that the commissioners should be authorized to recommend an extension of the grant."

Upon this authority the governor directed the whole of the awards in the said claims to be referred to the second commission, with an instruction to recommend an extension of the grants.

This was done, presumably, under under the authority of the ordinance of 1841, which enabled the governor in council to make extended grants in certain cases.

Under this authority Mr. FitzGerald, the commissioner, sent to the governor the following memorandum:

[Memorandum by Mr. Commissioner FitzGerald.]

Reasons for extending a grant of land to Mr. William Webster: (1) By the accompanying synopsis of the land claims of Mr. Webster it appears that his outlay amounts to £7,787,13s., which, according to the valuation scale in the land claims ordinance, he may be considered as having paid for 50,904 acres; and, even limiting his outlay to the mere payments to the natives, he would be fairly entitled to 17,950 acres. (2) Considerable sales of land having been made by him on the faith of all his valid purchases being recognized by the Crown. (3) Should he not be enabled, by great liberality on the part of his excellency, to meet his engagements, even partially, he is likely to be overwhelmed with lawsuits and subjected to great losses. (4) Mr. Webster is one of the most enterprising settlers in this colony, having established a shipbuilding yard, several whaling stations, water mills, and other improvements.

For these reasons I do most conscientiously recommend for his excellency's approval that grants be issued to the undermentioned parties, upon a letter of authority to that effect from Mr. Webster:

	Acres.
Claim No. 305. Wm. Webster .....	125
Claim No. 305A. Wm. Webster .....	125
Claim No. 305C. Wm. Webster .....	400
Claim No. 305G. Wm. Webster .....	1,944
Claim No. 305I. Wm. Webster .....	1,187
Claim No. 305K. Wm. Webster .....	1,219
Claim No. 305B. David E. Munro .....	550
Claim No. 305. Henry Downing .....	125
Claim No. 305C. Henry Downing .....	400
Claim No. 305K. Henry Downing .....	320
Claim No. 305A. Peter Abercrombie .....	125
Claim No. 305K. Peter Abercrombie (one-eighth of his purchase from Webster) .....	5,000
Claim No. 305K. Felton Mathew .....	2,560
Claim No. 305K. John Johnson .....	1,280
Claim No. 305K. Vincent Wanostrocht .....	250
Claim No. 305K. John Wrenn and Jeremiah Nagle .....	150
Claim No. 305K. Arthur Devlin .....	1,255
Claim No. 305K. Geo. Russell .....	640

Amounting in the aggregate to 17,655 acres.

Land Office, Auckland, 22nd April, 1844.

ROBT. A. FITZGERALD,  
*Commissioner.*

It must ever remain a mystery how Mr. Commissioner FitzGerald could have made such recommendation. Ignoring the evidence taken before the first commission, and examining nothing, he takes for granted the gross amount stated by Mr. Webster as having been paid by him to the natives in respect of all his claims, including those he had withdrawn and those he had sold, and adding to this gross amount the various sums which Mr. Webster states he had spent on the lands he claimed, without inquiry whether or not they had been really spent, he treats the latter sums as purchase-money paid to natives for land, and finds the total outlay to be £7,787 13s. And for this amount he estimates Mr. Webster to be entitled to 17,655 acres of land; that is to say, he estimated the land at 3s. per acre, as if it had been bought in 1837, whereas the bulk of it was bought by Webster in the last half year of 1839, when its price should have been 8s. per acre.

Shortly stated, Mr. FitzGerald gives Mr. Webster credit for twice the amount he is justly entitled to; and, in respect of that credit, recommends a grant of land at one-half of its proper price, so that Webster obtains a quadruple award in his favour.

The whole records of the land claims court do not show any other instance where a claimant has been treated with such extraordinary liberality as Mr. Webster was under this award.

Governor Fitzroy, however, adopted the recommendations of Commissioner FitzGerald, and grants were issued on 1st May, 1844, in accordance therewith, as shown in the following table:

*Synopsis of the awards made under the second commission in William Webster's land claims.*

No. of claim.	Date of purchase.	Locality.	Area.		Land granted.		Payments to natives.	
			Claimed.	Awarded	To Webster.	To his assigns.	Stated in deed	Proved in court.
			<i>Acres.</i>	<i>Acres.</i>	<i>Acres.</i>	<i>Acres.</i>	£	£ s.
305	June, 1837...	Coromandel (Makariri).	250	250	1125	(a) 125	208	343 16
305A	Dec., 1836...	Coromandel (Wanganui Island).	250	250	1125	(b) 125	260	284 3½
305B	Nov., 1839...	Thames (Mangemangeroa).	1,500	550	-----	(c) 550	90	215 15½
305C	Jan., 1837...	Coromandel (Taupiri).	800	800	1400	(d) 400	203	268 10
305D	1836...	Coromandel (Wai-au).	41,000	-----	-----	-----	450	-----
305E	Mar., 1838...	Great Barrier Island.	420,000	-----	-----	-----	1,200	580 15
305F	1836...	Coromandel (Motauipiri Island). <sup>4</sup>	-----	-----	-----	-----	80	-----
305L	Nov., 1839...	Thames.	43,000	-----	-----	-----	90	-----
305G	Jan., 1839...	Point Rodney.	10,000	1,944	1,944	-----	490	421 4
305H	Nov., 1839...	Bay of Plenty (Tairua).	63,000	-----	-----	-----	450	169 3
305I	May, 1838...	Waiheke.	3,000	1,187	1,187	-----	108	202 16
305J	May, 1839...	Mercury Island.	66,000	-----	-----	-----	944	278 0
305K	Dec. 1839...	Piako.	80,000	12,674	1,219	(e) 11,455	1,195	1,726 8
305M	May, 1838...	Waiheke.	73,500	-----	-----	-----	108	80 0
Total.....			182,300	(f) 17,655	(g) 5,000	12,655	5 976	(h) 4,570 11

<sup>1</sup> Sold by Webster in Aug., 1844, to F. S. Peppercorne for £125.

<sup>2</sup> Sold by Webster in Aug., 1844, to R. Dacre, who sold to G. Beeson for £125.

<sup>3</sup> The land in these four grants was sold by Webster, 15th Aug., 1844, to John Campbell, of Sydney, for £4,000.

<sup>4</sup> Withdrawn by claimant.

<sup>5</sup> Disallowed; not purchased from rightful owners.

<sup>6</sup> Purchase of a small section of the island proved, but no grant recommended.

<sup>7</sup> Disallowed; purchase not completed before 14th Jan., 1840.

(a) To Henry Downing. (b) To Peter Abercrombie. (c) To David E. Munroe. (d) To Henry Downing. (e) To Henry Downing, 320 acres; Peter Abercrombie, 5,000 acres; Felton Mathew, 2,560 acres; John Johnson, 1,280 acres; Vincent Wanoastrocht, 250 acres; Jeremiah Nagle and John Wrenn, 150 acres; George Russell, 640 acres; and to Arthur Devlin, 1,255; total, 11,455 acres. (f) Exclusive of 24,269 acres awarded to Abercrombie, Nagle, and Webster in respect of their joint claim at the Great Barrier Island. (g) Exclusive of 8,080 acres granted to W. Webster as his share on partition of the award at the Great Barrier Island with his partners Abercrombie and Nagle. (h) Of this sum only £140 10s. was paid in cash; the remainder, £4,430 1s., represents the value of goods given in barter, estimated, according to the ordinance, at three times their retail selling value in Sydney; the total sum paid representing an average of 5s. 8d. for each acre granted.

A notification was published in the New Zealand Gazette on the 6th May, 1844, that the foregoing grants were ready for issue. Webster received his grants for 5,000 acres and within less than four months had transferred the whole of these lands to his creditors, besides the 12,655 acres granted directly to them, leaving himself without an acre of all his purchases, and still a debtor to the Sydney merchants.

There is not anything surprising in this, for it must be sufficiently apparent from the evidence printed above in these pages that Mr. Webster had no means of his own; that he speculated for land in New Zealand with goods obtained on credit, and, in the absence of goods, that he gave the natives promissory notes for cash or promises for goods which at times he was unable to redeem; and that he was ultimately crushed by the weight of the interest charged by the Sydney merchants for cash and other advances made to him.

There yet remained two claims—305H, Tairua, and 305J, Mercury Island—on which the first commission had not yet reported; and from these Mr. Webster hoped to obtain something. No doubt that in May, 1844, when Webster gave his evidence in both these cases, he heard from the commissioners that no grant had been recommended in claim No. 305M, for he never mentions it again.

The first evidence in both 305H and 305J was taken by Major Richmond, and

after his promotion to Wellington was continued by Colonel Godfrey. In claim 305H, at Tairua, in the Bay of Plenty, the evidence taken by Major Richmond was of a preliminary nature only. Colonel Godfrey, knowing that Mr. Webster proposed to advance a claim of £2,000 against the government in respect of the cutting of spars for the *Tortoise* from the land claimed, noted the original papers with a minute, "This case requires caution." At Coromandel, in May, 1844, he received the evidence of Webster and the witnesses in his favour; and then removed his court to Tauranga, in the Bay of Plenty, where, in the following July, he received ample evidence in opposition, and that no purchase had been rightly concluded. He recommended no grant, and also awarded no compensation in land elsewhere for the money, £169 5s., proved to have been paid by Webster to persons not the rightful owners, because Webster had already received a maximum award of 2,560 acres.

In claim 305J, at the Mercury Island, Webster claimed 6,000 acres. The whole island, by survey, contains only 4,090 acres. Ample evidence was given to show that Mr. Webster's valid purchase was limited to a small piece of land at the south end of the island and another small piece on the northeast coast thereof, the supposed contracts being unknown; but Colonel Godfrey recommended no grant, as Webster had already received a maximum grant of 2,560 acres.

The report in both these claims was made at Auckland on the 29th August, 1844. No notification of the substance of either report was made in the Gazette, and Mr. Webster seems to say that he knew nothing of them, and also adds that no opposition was made to either of these claims. This may be so as respects the claim of Tairua, because the evidence of the opposing witnesses was taken at Tauranga; but it can scarcely be so in respect of the claim at Mercury Island, seeing that the opposing evidence was taken at Coromandel on the 29th May, at the place where his own evidence had been taken on the 23rd May, only six days previous. However this may be, when Governor Fitzroy, on the 16th October, 1844, referred the reports on Mr. Webster's claims to the second commission for a recommendation of extended grants, the reports on the three claims—305H, 305J, and 305M—were included in the reference, but with a direction to the commissioner to lay them aside for further consideration, his intention possibly being ultimately to make a grant to Webster of the small pieces of land he was proved to have bought at the Mercury Island, and to compensate him for his wasted outlay in respect of the claims 305H and 305M by making him a grant of Crown lands of average value at the rate of 1 acre for each pound sterling of such outlay.

It has been necessary to say thus much on the claims 305H and 305J in order to throw a true light upon the correspondence which follows.

Whilst the governor's decision on the above two claims was yet in abeyance, Mr. Webster wrote a letter to Mr. Commissioner FitzGerald to ascertain the decision in these claims, and in reply received from Mr. Hamilton, the private secretary to Governor Fitzroy, that letter of the 10th March, 1845, which has provoked so much comment in the report of the committee of the Senate.

The correspondence, which is remarkable, is as follows :

*Mr. Webster to Mr. Commissioner FitzGerald.*

AUCKLAND, 8th March, 1855.

SIR: I take the liberty of writing to you to know what has been the decision on my two land claims. I believe they are No. 305H; one is the Big Mercury Island, and the other is a piece of land near the River Tairua, in the Bay of Plenty. Both of those claims was examined before Commissioner Godfrey at Coromandel Harbour, and I have not yet heard any more of them. The Mercury Island was purchased in 1838. I paid upwards of £300 for it, and have had possession of it ever since and have expended a deal of money on it; but the whole of the payment agreed on was not given to the natives, and when the claim was examined they agreed to give me a part of it for what they had received. The piece of land near Tairua was also purchased in 1838, and I paid about £400 for it, and since that I have expended about £400, for which I have never received any return for whatever. I have never heard of any dispute of the title, which, I suppose, the evidence taken by the commissioner will prove.

Your answer to this will oblige.

Your most obedient servant,

Commissioner FITZGERALD, etc.

WM. WEBSTER.

[Minute thereon by the Governor.]

Very large grants having been made to Mr. Webster no further grant can be made until the opinion of the secretary of state as to the former grants is made known.

R. F., 10th March, 1845.

Mr. FITZGERALD:

Direct Mr. Chipchase to communicate this reply to Mr. Webster, who is now in Auckland, but about to leave immediately.

R. F., 10th March, 1845.

*The private secretary to Mr. Webster.*

GOVERNMENT HOUSE, 10th March, 1845.

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims, marked 305H and 305J, and is sorry to find himself precluded from authorizing any further grant to be made to you at present, on account of the largeness of those grants already made in your name.

I have, etc.,

J. W. HAMILTON, *Private Secretary.*

P. S.—The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

It will be seen that the governor's minute does not convey any direct reply to Mr. Webster's letter: it does not inform him of the substance of the commissioner's reports on Claims 305H or 305J, nor hint that such reports were still under consideration; and Mr. Hamilton's letter does not convey the substance of the governor's minute, but rather leads to the inference that the claims had not been considered.

This letter is unfortunate in its expression also, for the land in Mr. Webster's undisputed possession, mentioned in the postscript, refers to the small pieces of land which he was proved to have bought in the Mercury Island, but it has been assumed, wrongfully no doubt, to apply to the whole of Mr. Webster's claims. A great deal has been said about this letter in the report of the committee, and an attempt has been made to prove that Mr. Webster had been unjustly treated; but this idea will be dispelled when Mr. Hamilton's letter is read together with the correspondence and minutes here given in relation to its origin.

Referring again to the minute of Governor Fitzroy of the 10th March, 1845, it can not be a matter of surprise that he should hesitate about making any more grants to Webster until the opinion of the secretary of state as to the former grants is made known; the truth is more likely to be that the governor, in making such large grants, was frightened at his own act in the face of the despatch addressed to his predecessor by Lord Stanley when notifying the disallowance by Her Majesty the Queen of the ordinance of 1842 above mentioned.

That despatch was as follows:

[Extract from a despatch from Lord Stanley to Governor Hobson.]

DOWNING STREET, 19th December, 1842.

SIR: In my despatch No. 76, of the 1st ultimo, I informed you that Her Majesty's decision had been suspended on the act of your Government, passed on the 25th February, 1842, No. 14, "to amend an ordinance enacted by the governor of New Zealand, with the advice and consent of the legislative council thereof, session I. No. 2, for the settlement of land claims within the colony."

\* \* \* \* \*

I have now to intimate to you Her Majesty's decision with regard to that act and, in doing so, I think it right to acquaint you generally as to the grounds of her decision.

When the British Government undertook to colonize New Zealand it was with the distinct intention not to admit that any titles to land could be valid which were not derived from or expressly confirmed by the authority of Her Majesty.

This principle was laid down in Lord Normanby's instructions to you, on your first appointment to proceed from England to New Zealand: and it was publicly announced in the earliest proclamations issued, both at Sydney and in New Zealand, on assuming the sovereignty of those islands.

In Sir G. Gipp's address to his council, in explaining the principles involved in his bill on land claims, he accumulated proofs that no British subject was entitled to acquire lands in countries under the circumstances of New Zealand otherwise than with the sanction of the Government. He showed that the same principle of public law was confirmed up to the present time by the highest legal authorities in England, and it was also enforced in the extensive colonization which is carried on by the United States of America. The conclusion deduced by Sir G. Gipp from his argument was that those who had previously engaged in the acquisition of lands from the natives in New Zealand had no rights of their own to such acquisitions, but that whatever the Crown might accord to them would be pure concession; and from this conclusion, notwithstanding the arguments which have since been advanced against it, I see no reason for dissenting.

But, while the principle was so distinctly laid down from the first, there was no wish to deal severely with those who had made bona fide purchases from the natives; and it was announced, in the same proclamation which declared the paramount rights of Her Majesty, that means would be taken to investigate the claims of the owners of any lands "acquired on equitable conditions, and not in extent or otherwise prejudicial to the present or prospective interests of the community."

A bill was passed accordingly by the governor and council of New South Wales—within whose province it then was to legislate for New Zealand. It provided for the appointment of commissioners to hear and report upon claims: it determined at what rate the value of goods employed in barter should be estimated, and laid down a graduated scale of the prices at which land should be assigned to claimants, naming a much lower price to regulate the quantities allotted to those who had made purchases at earlier periods than to those who had bought when the islands had acquired increased value and security, or might be supposed likely immediately to pass under the sovereignty of Great Britain.

The details of that measure can not but be considered as very favourable to the claimants. The rate at which the value of their goods was to be estimated was no less than three times the selling price at Sydney. The assumed price of land was to be not more than 6*l.* an acre for all purchases from the 1st January, 1815, to the end of 1824, and then, ascending very gradually, it was not until after the commencement of 1839 that it was to be taken at from 4*s.* to 8*s.* an acre. Such being the assumed prices up to 1839, inclusive, their moderation will be more apparent when it is borne in mind that in the course of the very next year the actual price of land for fresh purchasers became 20*s.* an acre.

But, while thus indulgent to the claimants in all minor particulars, the foresight of the New South Wales Government provided one important check against abuses arising out of claims to an extent which might be seriously prejudicial to the prospective interests of the colony. A maximum was fixed of 2,560 acres (4 square miles), beyond which the commissioners were not to recommend any grant of land. \* \* \*

In determining the course to be taken as to allowing or disallowing this ordinance, I have considered the subject with reference, first, to the instructions on which you conceive yourself to be acting; secondly, to its effects upon the interests of the colony at large; and, thirdly, to its consequences as regards individuals; and I proceed to each of these in their order.

\* \* \* \* \*

Secondly, to the probable effect of the change upon the general interests of the colony at large.

To these it appears obviously highly unfavourable on that most important point, the extent of land to which it permits titles to be established.

It is not my intention here to discuss the evils attendant on the accumulation of land in new colonies in the hands of persons without capital or the means of introducing labour. I consider them to have been sufficiently established by experience to entitle me to assume them as admitted. By the ordinance of the 9th June, 1841, which has been assented to by Her Majesty, this evil is guarded against by the limitation to 2,560 acres, beyond which no grant can be claimed.

This restriction the ordinance now under consideration abandons, and, placing no limit on the size of the grant which each claimant may acquire, might

prove the means of exposing New Zealand to those evils which have resulted in other colonies from throwing large and unmanageable grants into the hands of individuals unable profitably to use them. What the extent of this danger may be in the present instance it is impossible, from the imperfect state of my information, to calculate; but when I see it officially reported that nearly nine hundred claims had already been lodged, involving demands for not less than twenty million acres, I can not think that it would be prudent in Her Majesty's Government to dispense with the direct and wholesome check upon the undue acquisition of land which the former ordinances had imposed, and which, from the earliest proclamations, the settlers must have been led to expect.

I feel, therefore, no doubt, as regards the interests of the colony at large, that they will be best consulted by reverting to the ordinance of June, 1841. Feeling, however, the consideration which is due also to the interests of individuals, I will examine—

Thirdly, the provisions of this ordinance as affecting claimants themselves.

To many of them, and those too the persons most deserving of consideration—viz., a large body of the early settlers—judging by their own representations, it appears probable that its operation would prove most injurious. The principle of the ordinance of June, 1841, was to value the land, to those who had acquired it in times of insecurity and expended labor and capital on its improvement, at a low rate, and in so doing proceeded upon a perfectly just principle. That principle the ordinance of February, 1842, abandons, placing all parties upon an equality, fixes a uniform price of 5s. upon land whenever and under whatever circumstances it had been acquired. To the justice of this I cannot assent. The price of 5s. per acre would be too high for those to whom by the graduated scale it would have been valued at 6d., and too low for those to whom it would have been valued at 8s.

\* \* \* \* \*

Under such circumstances, I need hardly observe that it became my duty to advise Her Majesty to disallow, and Her Majesty is accordingly pleased hereby to disallow, this ordinance.

It follows that you will be guided in future by the provisions of the enactment of 9th June, 1841, which will, of course, be revived by the disallowance of the act which repealed it.

I have, etc.,

STANLEY.

It happened that the opinion of the secretary of state upon the extended grants made by Governor Fitzroy was not received in the colony until three years after the grants had been issued and eighteen months after Captain Fitzroy had left the colony. In a despatch dated the 7th September, 1844, enclosing to the secretary of state copies of the minutes of the executive council for the half year ending the 30th June, 1844 (amongst others being those above printed relating to Webster's claims), Governor Fitzroy gave no particulars of the grants issued under the aforesaid authority of the executive council, nor did he furnish any such information to the secretary of state in any subsequent despatch sent by him during the remainder of his term of office. Lord Stanley, in a despatch 15th August, 1845, to Lieutenant-Governor Grey, in respect of the action of the executive council in making such grants, observes that a question involving so important a principle should have been made the subject of a distinct and separate report; and by a subsequent despatch requires a full report on the cases to be sent to him.

Governor Grey accordingly sent his report on the grants to Mr. W. E. Gladstone, on 23rd June, 1846; and ultimately the opinion of the secretary of state was expressed in the following despatch, received in the colony about the month of June, 1847:

[Extract of a despatch from the Right Hon. Earl Grey to Governor Grey.]

No. 50.]

DOWNING STREET, 1st March, 1847.

I acknowledge, and propose to answer together, your despatches Nos. 65, 66, and 68: the two former of which are dated on the 23d June, 1846, and the last of which is dated on the 24th of the same month. Although the cases to which they relate are different, the questions arising on them are too much alike to be properly disconnected from each other.

\* \* \* \* \*

There appear to be twenty-four other cases in which the grants have exceeded the prescribed maximum of 2,560 acres. In seventeen of these cases the land

claims commissioners appear to have reported in favor of smaller grants. But, for reasons which are unexplained, Governor Fitzroy reopened the inquiry, and in the result gave as many new grants in extension. In the absence of any explanation from your predecessor of the motives by which he was actuated, I can not venture to express any opinion on this class of cases. I can only state that the impolicy of these lavish grants of land is too evident to call for any explanation, and that the illegality and invalidity of them would seem to follow from the circumstance of their having been made in direct opposition to the reports of the commissioners. On what ground Governor Fitzroy's claim to set aside previous decisions may have rested I am not informed, nor can I conjecture.

I hesitate, however, to instruct you to engage in litigation requisite for setting aside these grants, in ignorance, as I necessarily am, of the obstacles which in prosecuting such suits you might have to encounter.

\* \* \* \* \*

It is possible that practically what has been done may be found irreparable and irremediable, and that the difficulties of legal proceedings may defeat any attempt to resume the improvident grants which have been made. Yet, even if such should unfortunately turn out to be the case, this correspondence may not be wholly unprofitable. It will remain as a record of the extreme inconvenience resulting from a disregard of law, and from an improper facility in cases of this kind.

\* \* \* \* \*

I have, &c.,

GREY.

Governor GREY, &c.

The case in respect of Mr. Webster's grants was indeed irremediable, as he had sold all his lands and parted with his titles. New complications also arose from the obstruction of the natives, who, in several instances, refused to deliver possession of the lands granted to Webster because he had not fulfilled his pledges to them, nor paid the balance of the money he had promised them: so that, ultimately, considerable sums of money had to be paid by the colonial government in redemption of Mr. Webster's broken promises, before the owners of the lands purchased from Webster could obtain possession thereof. This will appear from the following memoranda from the late Sir Donald McLean and Mr. Drummond Hay:

[Memorandum by the chief native land purchase commissioner on some uncompleted purchases of land by Mr. Webster.]

#### LAND COMMISSIONER'S OFFICE, *Auckland, 10th July, 1854.*

SIR: I have the honour to report to you, for the information of his excellency the officer administering the Government, that I find there are certain lands for which Crown grants have been issued, and to which the native title has not as yet been extinguished.

For instance, there is a block of land, comprising about eight hundred acres, at the Waiheke Island, for which a certain amount of goods and money were paid by Mr. William Webster, of Coromandel, and for which the commissioners for investigating and reporting on claims to lands purchased from the natives have recommended a Crown grant. It appears, from the statements of the natives, that a vessel had been promised them by Mr. Webster conditionally that they would admit the justice of his claims before the commissioner's court: this vessel they nominally had possession of, but it was taken away by Mr. Webster to Coromandel, to undergo, as he alleged, some repairs, and was never afterwards returned to them. The natives, in consequence, will not give up the land. The consequence is obvious, that any person taking possession there would be driven off, and the Government in all probability involved in endless difficulties before the matter could be adjusted or the validity of its grant established.

A second case, something similar in its bearings, is now under my notice with reference to land claimed by the said Mr. Webster at the Piako, and for which grants have been issued. These lands have only been alienated by a section of the claimants, and quiet possession of it can not possibly be given to settlers until a further payment is made.

I am aware that the precedent of making such payments is a dangerous one; but I apprehend that leaving such questions unsettled would be still more so. These lands have been sold lately on the faith of a Crown grant, some of them

at high prices. Persons taking possession will be driven off by the natives, and it may consume large sums of money to obtain an undisputed title. The only course, therefore, which I can suggest under the cases alluded to is that, as faith has not been kept with the natives by the original purchaser, they should be induced to relinquish their claims in favor of the Government for a moderate consideration, and this consideration might be in connection with the sale of fresh lands to the Crown. By this means they would obtain satisfaction for the past, and place land at the disposal of the Government which they would not agree to sell until their old claims, where, in cases such as the present, apparent injustice is done to them, are satisfied.

Should his excellency favor this view of the question, a good opportunity for settling with a large majority of the natives for their claims to the above lands now presents itself, as they are at present on a visit to Auckland, and, if they are not settled with, it is questionable if such easy arrangements can be made with them at any future period.

The Waiheke chiefs would agree to give up the disputed claim of 800 acres, and an additional block, comprising about eight hundred acres of valuable forest land, at the watering place at Waiheke, for a consideration of £300, and I believe the arrangements at Piako could be adjusted, if done promptly, on equally reasonable terms.

I have, &c.,

DONALD MCLEAN,  
*Land Commissioner.*

The COLONIAL SECRETARY, *Auckland.*

[Extracts from reports by Mr. District Commissioner Hay to the chief commissioner.]

AUCKLAND, 21st October, 1857.

SIR: I have the honor to state for your information, with regard to the land on the Piako, as follows:

\* \* \* \* \*

With regard to Webster's purchase, all that I could do amounted to nothing, as I had no names to go by with regard to boundaries, and a long time has elapsed since the purchase; moreover, the Ngatihaurea—who, as vassals of the Ngatipaoa at the time of the purchase by Webster, did not dare then to say anything—have now, from the decline of the influence of the chiefs, come forward and denied the sale of the frontage from Maukoro to Angapunga, stated to have been purchased by Webster, and declare his eastern boundary to be that laid down in the accompanying plan. I have also shown in this plan what they state to have been his western or back boundary. In consequence of the facts above stated, and from the frontage to the river having been supposed to be twice its actual length, the purchase made by Mr. Webster turns out to be only about six thousand acres.

\* \* \* \* \*

AUCKLAND, 11th November, 1857.

I should wish to call the attention of the Government to the following facts, from which have arisen the delay and difficulty in settling the Piako question.

The natives have refused the sum offered yesterday (£50) because they did not consider it sufficient, and also because they maintain that some payment ought to be made by the Government on account of Webster's purchase. With regard to this purchase, they have been most consistent in asserting that, though their names were signed together in token of assent, and their evidence before the commissioners' court went to prove that the purchase was a bona fide one, still they were induced to act thus from the promises and representations of Webster, and that at that time they hardly knew the importance of the steps they were taking. I may observe that the sum promised by Webster was five times the amount paid by him. It is needless to state that the promise was not kept.

\* \* \* \* \*

AUCKLAND, 18th December, 1857.

\* \* \* \* \*

On my arrival at Maukoro, on the Piako, I found the residents on the block (Ngatirauea, formerly vassals of the Ngatipaoa) prepared to assert their right, not only to sell land on their own account, but to retain all land belonging to them that had been sold to Webster without their consent and without their sharing in the payment. The natives dispute a good deal amongst themselves,

one of the bones of contention being the frontage to the River Piako. In almost all the receipts for instalments on land on the Piako the River Piako is named as the eastern boundary, but now they one and all denied and ridiculed the idea of their ever having sold the land right down to the river, especially while the old claim had been so long unsettled (meaning Webster's). I found that my insisting on the fulfilment of their agreement with regard to boundaries would, as far as the River Piako was concerned, be mere waste of time. I accordingly proceeded with the survey. \* \* \* I had one continued discussion with the natives with regard to Webster's claims, but they were always most consistent in ignoring entirely the boundaries as laid down in any documents to which I had access. From all that I have seen, I am inclined to think that the natives are in the right—at any rate, far more so than the Europeans—in this instance. The land included in Webster's claim that was retained by them south of Pouriuri amounts to about three thousand acres (3,000 acres). Out of this I have since purchased and paid for finally about twelve hundred acres (1,200 acres). The river frontage in the block surveyed begins where the surveyor's line meets the river beyond Te Areiriri. The last-mentioned purchase brings the frontage nearly two miles further north.

\* \* \* \* \*

I have, etc.,

G. W. DRUMMOND HAY,  
*District Commissioner.*

To the CHIEF COMMISSIONER,  
*Native Land Purchase Department.*

With the difficulty as to the particular grant issued to Webster for land at the Piako is connected the general question as to the validity of all the grants issued by Governor Fitzroy under the land claims ordinance, and this brings me to the consideration of the proceedings of

#### THE THIRD COMMISSION.

In order to facilitate and hasten the settlement of the land claims, Governor Fitzroy arranged that grants should be issued to the claimants, giving the areas in such grants according to the quantity estimated by the claimants themselves. In some cases the boundaries described in the grant did not include the given area, and in other cases they included more.

The Point Rodney claim (305G) and the Waiheke claim (505I) are instances of both. In 305G there was a surplus, but in 305I the area described as containing 1,187 acres proved on survey to contain 885 acres only. The original claimant and grantee was not wronged in such case, as he was granted the actual land he claimed to have bought from the natives; but the derivative purchaser, who bought from the grantee a specific acreage, suffered considerably by the transaction; still he ought not to have bought in such case without having a survey made, notwithstanding the difficulty of obtaining it for want of a sufficiency of surveyors in the colony at that time.

Grants, according to Governor Fitzroy's directions, were issued for lands unsurveyed and imperfectly described. In the notice published in the *Gazette* of the 23rd May, 1844, announcing his intention, the reason adduced for the issue is the impossibility of getting the land surveyed without causing such delay as would be ruinous to the parties interested. These grants are full of defects, such as recitals entirely the reverse of the fact, stating, for instance, the quantities of land conveyed were those awarded by a commissioner, while, in fact, the grant conveyed double or treble the quantities; or that recommendations had been made, while, in fact, the claims had never been heard by a commissioner. Some of these purported to convey more land than had been originally claimed, and most of them contained no particular description of the specific portions of land intended to be conveyed.

On the 16th August, 1856, "the land claims' settlement act, 1856," was passed for the purpose, among other things, of correcting the Crown grants issued under the previous existing ordinances, and the validity of which grants had been disputed on various grounds.

The act repealed all of the former ordinances but re-enacted all the provisions of the ordinance of 1841 which were not unsuitable for the purpose of settling outstanding claims, whilst additional powers were enacted for the purpose of calling in and cancelling or repealing all Crown grants previously issued and of issuing corrected grants in lieu thereof. But the act prohibited the reconsid-

eration of any case disallowed by any previous commissioner, or that had been withdrawn by the claimant.\*

All claimants, whether original or derivative, were required to have the exterior boundaries of their claims surveyed and plans sent in to the commissioner, together with their grants and all documents and deeds relating to the alienation of any claim by an original claimant. A survey-allowance was made of 1s. 6d. per acre, and, in respect of court fees, to be received in land within the claim at an estimated price of 10s. per acre.

Mr. F. D. Bell (now Sir Francis D. Bell, agent-general for the colony in London) was the sole commissioner under the act. He held courts all over the colony to receive the evidence of claimants and others. All the grants issued under the ordinances were surrendered to him, together with all documents relating to the land described in such grants. He also had all the original native deeds and other documents placed before the first commissioners, together with their original reports and the evidence taken by them in each case. An exhaustive examination of every claim was made by Mr. Commissioner Bell, and thereon he made his awards, which were all confirmed.

A general report of his proceedings was presented to the general assembly, and printed in the appendix to the journals in 1862, D. No. 10; and in the year following the appendix to such report, showing in detail the award in each claim, was printed in the appendix to the journals 1863, D. No. 14.

The awards made by Commissioner Bell in Webster's claim are shown in the following table, in which is also shown, for the purpose of comparison, the vast difference between the area of the several claims as estimated by Mr. Webster, and awarded under the second commission previous to survey, and the actual area as discovered on survey:

*Synopsis of the awards made by the third commission in Mr. Webster's land claims, exclusive of the claim at the Great Barrier Island.*

No. of claim.	Locality.	Area.			Remarks.
		Claimed.	Awarded.	Ascertained on survey.	
		<i>Acres.</i>	<i>Acres.</i>	<i>Acres.</i>	
305	Coromandel (Makariri).	250	250	115	Grants, 25th Jan., 1861, for 57½ acres to R. Dacre and 57½ acres to H. Downing.
305A	Coromandel (Wanganui Island).	250	250	335	Grant, 3rd May, 1860, for 335 acres to G. Beeson.
305B	Thames (Mangemango-roa).	1,500	550	-----	Grant ordered to J. Salmon, but not issued; no survey made.
305C	Coromandel (Taupiri) ..	800	800	727	Grant to R. Dacre for 284 acres, 3rd May, 1860; and for 384 acres, 20th Nov., 1857, and for 59 acres, 25th Jan., 1861, to T. Keven.
305D	Coromandel (Waiau) ...	1,000	} -----	} -----	{ Withdrawn by claimant, 23d May, 1844.
305E	Great Barrier Island ..	20,000			
305F	Coromandel (Motutauriri Island).	-----			
305L	Thames .....	3,000	1,944	1,944	Grant to R. Dacre for 1,944½ acres, but not signed.
305G	Point Rodney .....	10,000			
305H	Bay of Plenty (Taírua) ..	3,000	-----	-----	No grant recommended, 29th August, 1844.
305I	Waiheke Island .....	3,000	1,187	885	Grant to J. Salmon for 885 acres, 3d July, 1860.
305J	Mercury Island .....	6,000	-----	-----	No grant recommended, 29th August, 1844.
305K	Piako .....	80,000	12,674	7,500	Grants to heirs of Sir S. Donaldson, 1,464 acres; ‡ to F. Whitaker, for 12,855 acres and 2,141 acres, 27th Nov., 1878, and for 294 acres, 30th Sept., 1878; total, 16,754 acres.
305M	Waiheke Island .....	3,500	-----	-----	No grant recommended, 16th December, 1843.
	Total .....	132,300	17,655§	11,506	Total grants, 20,760 acres.

\* In consequence of this prohibition the third commission took no cognizance of the claims Nos. 305D, 305E, 305F, 305L, 305H, 305J, and 305M.

† Commuted for scrip, at 15s. per acre = £1,599 10s.

‡ Commuted for scrip, at 7s. 6d. per acre = £549. Issued 18th February, 1880, to trustees under will of Sir S. Donaldson.

§ Exclusive of 24,269 acres separately granted in respect of the Great Barrier claim.

| Inclusive of allowance for survey and in respect of court fees paid.

Thus it will be seen that in the Piako claim, 16,754 acres being granted and only 7,500 acres admitted by the natives to have been sold by them to Webster, the entire difference between the two acreages had to be provided out of the Crown estate.

In the examination of Mr. Webster's claim 305K, for 5,000 acres at Piako, Commissioner Bell found that almost all Mr. Webster's titles for land in his other claims had become mixed up together with his titles in 305K, and also with the titles of derivative purchasers from him in his several claims, in joint or separate mortgages to the same parties in Sydney. For the disentanglement of this confused web the commissioner prepared an elaborate abstract of title, showing the various transactions which had occurred from time to time in respect to these lands: and, as this very valuable document throws a great light upon the nature of Mr. Webster's land transactions generally in New Zealand, an extract therefrom is printed here:

## IN THE COURT OF CLAIMS.

[Extract from the award made by Commissioner Bell in the matter of the grants issued 1st May, 1844, to the extent of 12,674 acres at Piako, in the claim Webster, 305K.]

On the 18th December, 1843, Commissioners Godfrey and Richmond reported, in Claim 305K, that William Webster had made a bona fide purchase of a tract of land on the west bank of the River Piako, which was estimated by the claimant to contain 80,000 acres, and they awarded a grant for the maximum of 2,560 acres. By a further report of the same date, after stating that a total quantity of 7,541 acres had been awarded in the separate claims of Webster, they recommended that amount to be reduced in the aggregate to the maximum grant of 2,560 acres.

There were a great many derivative claims from this one, 305K, but in all of them the commissioners reported that, as the maximum grant had been awarded to Webster, no grants could be recommended to them, viz:

	Acres.
1. Peter Abercrombie, one-half, or -----	40,000
2. Henry Downing -----	1,280
3. John Johnson -----	5,120
4. Vincent Wanostrocht -----	1,000
5. Jeremiah Nagle and J. Wrenn -----	600
6. A. Devlin -----	5,020
7. George Russell -----	2,560
8. Felton Mathew and G. Cooper -----	10,240
9. Charles Abercrombie -----	
10. Robert Abercrombie -----	
11. William Abercrombie -----	
12. W. Drake -----	
13. R. G. Dunlop -----	
14. J. Gibbs -----	
15. Thomas Jeffrey -----	
16. W. Liddell -----	
17. John Mackay -----	
18. John Wrenn -----	

These were derivative from Peter Abercrombie, who had bought half of the Claim 305K. Each claimant bought one-tenth of Abercrombie's half, and was to have one mile frontage to the Piako.

On the 10th of April, 1844, the claims of Webster having been brought before the executive council, a minute of the council was passed, authorizing Mr. Robert A. FitzGerald (whom Governor Fitzroy had appointed a commissioner under the land-claims ordinance) to recommend an extension of the award to Webster; and in pursuance of that authority Commissioner FitzGerald, on the 22nd of April, 1844, recommended that Webster should receive grants to an amount not exceeding 18,000 acres, which recommendation was approved by Governor Fitzroy. The reasons given for this extension were, that the outlay by Webster amounted to the sum of £7,787; whereby, according to the scale of computation by the schedule to the land-claims ordinance, he might be considered as having paid for 50,904 acres; that even limiting his outlay to the mere payments made to natives, he would be entitled to 17,950 acres: and that having made sales on the faith of all his valid purchases being recognized by the Crown, he would, unless treated with great liberality by the governor, be overwhelmed with law-

suits and subjected to great losses. Under these circumstances Commissioner FitzGerald recommended that there should be granted—

	Acres.
To Webster himself, in claims 305, 305A, 305C, 305G, 305I, 305K .....	5,000
Henry Downing, in 305 305C, 305K .....	845
Peter Abercrombie, in 305, and 305K .....	5,125
David E. Monroe, in 305C .....	550
Felton Mathew	2,560
John Johnson	1,280
Vincent Wanostrocht	250
J. Nagle and J. Wrenn	150
Arthur Devlin	1,255
George Russell	640
<div style="display: flex; align-items: center; justify-content: center;"> <div style="font-size: 3em; margin-right: 10px;">}</div> <div>One-fourth of the amounts they purchased from Webster</div> <div style="font-size: 3em; margin-left: 10px;">}</div> </div>	
Making a total of .....	17,655

On the 25th April, 1844, the governor “fully approved of all these recommendations, and engaged to sign grants for the various parties when laid before him.” On the 1st May, 1844, accordingly, the following grants were issued in respect of claim 305K, the subject of this decision:

	Acres.
To Peter Abercrombie, one-eighth of his 40,000 acres .....	5,000
Henry Downing, one-fourth of his 1,280 acres .....	320
John Johnson, one-fourth of his 5,120 acres .....	1,280
V. Wanostrocht, one-fourth of his 1,000 acres .....	250
J. Nagle and J. Wrenn, one-fourth of their 600 acres .....	150
Arthur Devlin, one-fourth of his 5,020 acres .....	1,255
George Russell, one-fourth of his 2,560 acres .....	640
Felton Mathew, one-fourth of his 10,240 acres .....	2,560
	11,455
And to William Webster himself .....	1,219

Making a total of .....

12,674

The whole of these grants contained the same description of boundaries and were on that account, as well as for other reasons, obviously void for uncertainty. They were accordingly called in by the Attorney-General, by notice dated 20th June, 1859, published in the New Zealand Gazette, and were all produced except the grant to Nagle and Warren for 150 acres. By an order dated 29th February, 1860, and published in the New Zealand Gazette of 1st March, 1860, the last-mentioned grant was adjudged void, and the others have also been adjudged void by orders severally enfaced thereon and cancelled. One of them, the grant to John Johnson for 1,280 acres, had been purported to be “corrected” by an indorsement, pursuant to the quieting titles ordinance of 1849; but the “exception” in it (as in all grants) of the land claimed by the native chief Takapu, not having been defined, pursuant to the twelfth clause of that ordinance, the correction appeared to me of doubtful validity, and I have not therefore excepted Johnson’s grant from the general cancellation of all the grants issued in 305K.

No claim has been made before me under either of the grants to Nagle and Wrenn, or Vincent Wanostrocht. The grant to Arthur Devlin has been conveyed to Stuart Alexander Donaldson, of Sydney, and a new grant applied for in the latter’s name accordingly; and all the other grants have been assigned to Frederick Whitaker and Theophilus Heale, of Auckland, who applied for the new grants in their names. The following is an abstract of the various conveyances and assignments under which the original claim has now devolved on these parties:

#### I.—STUART A. DONALDSON.

Grant to A. Devlin for 1,255 acres. By deed dated 13th October, 1848 (attached to the cancelled grant), Arthur Devlin conveys the land comprised in this grant to S. A. Donaldson in consideration of £3,000.

#### II.—WHITAKER AND HEALE.

1. *Grant to George Russell for 640 acres.*—By deed dated 13th April, 1855 (attached to the cancelled grant), George Russell conveys the land comprised in this grant to F. Whitaker and T. Heale in consideration of £200.

2. *Grant to Henry Downing for 320 acres.*—By deed dated 14th June, 1854 (attached to the cancelled grant), Downing conveys the land comprised in this grant to Thomas Henry in consideration of £112; and by deed (indorsed) dated the 14th January, 1860, Henry conveyed the same to Whitaker and Heale for £112.

3. *Felton Mathew, grant for 1,560 acres.*—F. Mathew died on the 26th November, 1847, having made his will on the 22nd July, 1847, bequeathing and devising all his property, real and personal, to his wife, Sarah Louisa Mathew, absolutely. By deed dated 16th January, 1860 (attached to the cancelled grant), S. L. Mathew conveys the land comprised in the grant to Whitaker and Heale in consideration of £1,024.

4. *Grant to John Johnson for 1,280 acres.*—John Johnson died on the 28th July, 1848. By deed dated 17th February, 1854, John Grant Johnson (his son), after reciting the death of John Johnson, and that by his will, 17th July, 1848, he devised this land to the conveyor, conveys the same to Thomas Henry in consideration of £453; and by deed dated 14th January, 1860 (indorsed on the preceding, and attached to the cancelled grant) Henry conveys the same land to Whitaker and Heale for a consideration also of £453.

5. *Grant to William Webster for 1,219 acres.*—By deed dated 15th August, 1844, after reciting four grants—viz, for 400 acres at Taupiri (305C); 1,187 acres at Waiheke (305I); 1,944 acres at Point Rodney (305G), and 1,219 acres at Piako (305K)—Webster conveys all the four pieces of land to John Campbell, of Sydney, in consideration of £4,000. (Deed attached to the cancelled grant.) By deed dated 20th April, 1854 (also attached), John Campbell conveys the same parcels to Ranulph Dacre in consideration of £350. By deed dated 7th August, 1854 (also attached), Dacre and his wife convey the land at Piako to Patrick Dignan in consideration of £609 10s. By deed dated 20th September, 1854 (also attached), Dignan conveys it to Thomas Henry for the same sum of £609 10s., and by deed dated 14th January, 1860 (indorsed), Thomas Henry conveys it to Whitaker and Heale in consideration of £600.

6. *Grant to Peter Abercrombie for 5,000 acres.*—In this case Whitaker and Heale are the last transferees of a variety of mortgages, made to secure a sum of money stated to amount to no less than £35,000; and, as the legal estate is vested in them, not (as under the preceding conveyances) in fee simple, but subject to the equity of redemption, I think it advisable to append the following abstract of title deeds, showing the devolution of William and Peter Abercrombie's claims at Piako, etc., to Whitaker and Heale, through Campbell and Smith and the Bank of Australasia:

(1) *8th October, 1845. William Abercrombie to Robert Campbell and Andrew Blowers Smith (conveyance).*—After reciting the grant, 1st May, 1844, of 5,000 acres at Piako, to Peter Abercrombie; and reciting the grant, 1st May, 1844, to Peter Abercrombie of 125 acres at Coromandel Harbour; and reciting that William Abercrombie was entitled to the greater portion of those two allotments, and that the same were granted to Peter Abercrombie as a trustee of such portions for William Abercrombie; and reciting that William Abercrombie was entitled to 150 acres at Kopu, in the Thames, and that it was intended to grant the same to Peter Abercrombie as a trustee for William Abercrombie, and reciting that William Abercrombie also claimed to be entitled to 15,000 acres at the Thames and 25,000 acres at the Great Barrier; and reciting that, by a mortgage dated 24th August, 1843, William Abercrombie and John Mackay, his partner in trade, had conveyed to Robert Campbell and Andrew Blowers Smith all their lands, etc., whatsoever and wheresoever, and the personal estate of Abercrombie and Mackay, subject to a proviso for redemption, to secure certain debts and advances, with power of sale in case of default; and reciting that there was still a large sum of money remaining due from Abercrombie and Mackay to Campbell and Smith, the exact amount whereof was not ascertained, and that Campbell and Smith were desirous that the same should be still further secured by an assignment of Abercrombie's interest in the above-mentioned allotments: Witnesses that, in consideration of the moneys to them due by Abercrombie and Mackay, William Abercrombie conveys and assigns to Campbell and Smith all his interest in the lands granted by the two above-recited grants; and also the 150 acres, 15,000 acres, and 25,000 acres, and all his right, claim, etc., both at law and in equity, to any of said lands: Subject to the same provisos for redemption, etc., as were contained in the said mortgage of 24th August, 1843.

[NOTE.—It is not necessary to recite the mortgage of 24th August, 1843, here; but I have examined it and find the preceding recital of its contents to be correct.]

(2) *13th February, 1846. Peter Abercrombie to Robert Campbell and Andrew Blowers Smith (mortgage).*—After reciting the same two grants, dated 1st May,

1844, as are referred to in the preceding deed, for 125 acres at Coromandel and 5,000 at Piako; and reciting that, by mortgage dated 1st January, 1845, Edward Chalmers, Jeremiah Nagle, William Webster, and Peter Abercrombie, and also William Abercrombie, John Mackay, and Charles Abercrombie, had conveyed certain lands in New Zealand to Campbell and Smith, to secure debts and advances (subject to proviso for redemption); and reciting that Campbell and Smith were desirous of having such advances further secured: Witnesses that, in consideration of such advances, Peter Abercrombie conveys the two above-mentioned parcels of land to Campbell and Smith, subject to such proviso and powers as were contained in the said mortgage of 1st January, 1845.

[NOTE.—The mortgage of 1st January, 1845, is not with the other deeds in Whitaker and Heale's bundle of papers relating to their claims. It is immaterial, however, except as to Peter Abercrombie's right to Kopu.]

(This mortgage has now been exhibited by Frederick Whitaker before me, 5th March, 1862.—F. D. BELL.)

(3) *1st April, 1851. Robert Campbell and Andrew Blowers Smith to J. J. Falconer and the bank of Australasia (transfer of mortgages).*—After reciting that Jeremiah Nagle, being entitled to certain lands at the Great Barrier, had mortgaged the same to William Abercrombie, John Mackay, and Charles Abercrombie, to secure £1,466, and also that William Webster and Peter Abercrombie, being also entitled to other tracts of land in New Zealand, had mortgaged them to William Abercrombie and John Mackay to secure £3,267; and reciting the mortgage of 24th August, 1843 [above recited in No. 1] from Abercrombie and Mackay to Campbell and Smith; and reciting the grant, 6th July, 1844, of 8,070 acres to Nagle, and the grant, 6th July, 1844, of 8,080 acres to Webster, and the grant, 6th July, 1844, of 8,119 acres to Abercrombie, at the Great Barrier; and reciting that, by three deeds, dated 15th, 6th, and 15th July, 1844, Nagle, Webster, and Abercrombie had conveyed the land in those grants to Edward Chalmers nominally; and reciting the mortgage, 1st January, 1845, Chalmers, Nagle, and Webster, also Peter Abercrombie and William Abercrombie, and John Mackay, to Campbell and Smith [above recited in No. 2], whereby Chalmers, by the direction of the others, conveyed to Campbell and Smith, the three parcels, first, secondly, and thirdly next in the present transfer of mortgages described; and reciting the grant of 5,000 acres at Piako, and 125 acres at Coromandel to Peter Abercrombie; and reciting the mortgages of 8th October, 1845 [No. 1], and 13th February, 1846 [No. 2]; and reciting that there was still due from William Abercrombie and J. Mackay to Campbell and Smith £10,000 for cash advances, and from William Abercrombie, John Mackay, Charles Abercrombie, Jeremiah Nagle, William Webster, and Peter Abercrombie, a further sum of £25,000 for cash advances, etc.; and reciting that Campbell and Smith, having become indebted to the corporation of the bank of Australasia in the sum of £35,000, had proposed to convey all the lands mentioned in the above deeds to the bank in liquidation of such debt, which proposal the bank had accepted, directing the conveyance to be made to Falconer: Witnesses that, in pursuance of such agreement, and for the consideration aforesaid, Campbell and Smith convey to Falconer and his heirs—

1. The 8,070 acres at the Great Barrier granted to Nagle;
2. The 8,080 acres at the Great Barrier granted to Webster;
3. The 8,119 acres at the Great Barrier granted to W. Abercrombie;
4. The 5,000 acres of Piako granted to W. Abercrombie;
5. The 125 acres of Coromandel granted to P. Abercrombie;
6. The right and interest of William Abercrombie to the 150 acres at Kopu, the 15,000 acres, and the 25,000 acres; and
7. All other lands to which they (Campbell and Smith) are or may be entitled under the deed of 24th August, 1843, with all claim at law or in equity, etc., to the use of Falconer, etc., subject to the equities of redemption (if any) then vested in the various mortgagors by virtue of the preceding mortgages: and further witnesses that, for the same considerations, Campbell and Smith assign to Falconer the personal estate of William Abercrombie and John Mackay; and also the principals and interest of the mortgage debts: And appoint Falconer attorney, to sue, etc. With mutual usual covenants. (Registered at Sydney, 17th June, 1858.)

4. *15th November, 1854. The Bank of Australasia to Frederick Whitaker and Theophilus Heale (conveyance).*—Annexed to last preceding deed of 1st April, 1851. After reciting that a sum of money greatly exceeding the consideration in the present deed stated still remained due on the security of the annexed deed, but that the Bank of Australasia had applied, in part extinguishment of such debt,

a portion of the lands and chattels mortgaged, and that Whitaker and Heale had contracted for the purchase of their interest in the residue for £6,000: Witnesses that, in consideration of such £6,000, the Bank of Australasia and Falconer convey, release, and assure to Whitaker and Heale all the lands (except so far as applied or disposed of) which by the annexed deed of 1st April, 1851, were conveyed to Falconer, subject to the equities of redemption (if any) then subsisting; and transfer the mortgages and mortgage debts, etc. And appoint Whitaker and Heale attorneys to sue, etc. With mutual covenants. Receipts for £6,000 by the Bank of Australasia appended. (Registered at Sydney, 17th June, 1858.)

[NOTE.—By a conveyance annexed to the preceding, and of even date, Whitaker and Heale convey the three parcels at the Great Barrier to W. S. Grahame; in respect whereof Grahame applied (see papers in Claim 32, of Webster and Abererombie) for a new grant in substitution for the old ones, and received (29th December, 1854) a grant for 24,269 acres.]

From the preceding documents it will be seen that the various grants which were issued in Claim 305K now stand thus:

	Acres.	
Grant to V. Wanostrocht.....	250	} cancelled; no claimant.
Nagle and Wrenn.....	150	
A. Devlin.....	2,255	} conveyed to S. A. Donalson for £3,000.
H. Downing.....	320	
J. Johnson.....	1,280	} conveyed in fee to Whitaker and Heale for a total consideration of £2,389.
G. Russell.....	640	
F. Mathew.....	2,560	
W. Webster.....	1,219	
P. Abererombie.....	5,000	} mortgaged to Whitaker and Heale, the consideration being part of £6,000.
Total.....	12,674	

Some time after the grants were called in—namely, on the 27th of September, 1859—I received notice from Mr. Robert Graham, on behalf of William Abererombie, that the latter claimed (*inter alia*) the 5,000 acres comprised in Peter Abererombie's grant. I thereupon fixed the 20th December, 1859, to hear the parties, but no proof of title was tendered on the part of Abererombie. On the 31st January, 1860, I informed Mr. Graham that I would wait till the mail due at Auckland in February arrived, in order to give the opportunity of certain papers coming, which he expected to receive from the Abererombies in support of the claim; but that, if they did not arrive then, I should proceed with the adjudication. Nothing whatever has since been adduced, nor, indeed, do I see how any can well be, to alter the position of the parties under the mortgages I have recited above. Neither is it material, because my recognition of Whitaker and Heale as the vestees of the legal estate does not effect any subsisting equities. The 24th section of "the land claims act, 1856," provides that every new grant shall be subject in equity to the same claims, rights, and interests as the cancelled grants in lieu whereof such new grants shall be issued. So Peter and William Abererombie may still (if any equities subsist) come in and redeem; and, if the recital in the transfer of mortgages to the Bank of Australasia be true—namely, that the amount due in 1851 upon the securities was £35,000—I should think Whitaker and Heale would be very glad to take the money.

Having thus shown the present ownership under the old grants, it appears to be necessary, before proceeding to the particular awards to be made to the respective claimants, to notice the position of the Government in the matter, and the way in which the public interest is in reality involved in the settlement of this claim. It is not within my province to express any opinion as to the original issue by Governor Fitzroy of grants to the extent of 12,674 acres in this claim, and of 24,269 acres in claim 32 of Webster and his partners, Abererombie and Nagle, making 36,943 acres granted in the two cases. But it is certain that, as regards the Piako claim, notwithstanding the evidence before Commissioner Godfrey in 1842, the natives would never have agreed to give up possession to the extent which Webster claimed to have purchased. When Johnson tried to go on the land comprised in his grant he found "serious obstructions and difficulties;" and as to the residue, the papers recorded in the case show that quiet possession was, ten years ago, certainly not to be had. The causes of the native opposition appear clearly in the reports of (see *ante*, p. 29) the district land purchase commissioner.

A more careful examination of the area which the natives admitted was Webster's showed that, out of the 18,000 acres included in the survey,\* there were about 7,500 acres so admitted to have been formerly sold, instead of 6,000, as estimated by Mr. Hay at first.

\* \* \* \* \*

F. D. BELL,  
*Land Claims Commissioner.*

AUCKLAND, 26th September, 1861.

This concludes what I have to say with respect to Mr. Webster's claims and the treatment they received from the duly constituted courts in the colony to which they were submitted for examination. All the original documents in any way connected with the said claims, all original native deeds, and letters showing the nature of the transactions between Webster and the natives, the original evidence of all witnesses (native or European), all the Crown grants originally issued to Webster, all the conveyances of land by Webster to his purchasers, all the original rewards and reports made by the several commissioners from time to time in each claim are still extant in Wellington among the records of the land claims court, and the foregoing insertions in this document have been copied from the said records.

It will be now necessary to point out the inaccuracies in the report of the Committee on Foreign Relations of the Senate of the United States regarding Mr. Webster's claims:

1. Statement, page 37, pars. 2 and 5.—That Mr. Webster claimed 500,000 acres, for which he paid the natives a consideration of \$70,000 (£19,834).

Answer. Total area claimed, as notified in the Gazette, 132,300 acres; consideration paid, in cash and merchandise, as proved before the court, the goods being estimated at three times their retail selling price in Sydney, £5,876.

2. Statement, page 39, par. 1.—That "he (Mr. Webster) has had no day in court, and his lands have been confiscated without a hearing and without notice."

Answer. The sworn evidence of Mr. Webster in every one of his claims, as given before a commissioner, signed by Mr. Webster himself in each case, is extant in the records of the land claims court, and has been printed in the foregoing part of this document.

3. Statement, page 39, par. 7.—"This refusal to confirm 'grants made to' Mr. Webster was not attempted to be justified on the ground that 'land claims marked "305H" and "305J" were not in the 'undisputed possession' of Webster, but solely on the ground of 'the largeness of the grants already made in your [Webster's] name.'"

Answer. The evidence previously printed herein, on pages 10 and 11, shows that, in respect of 305H, the claim was absolutely opposed by the native owners, and disallowed by the first commission; and that, in respect of 305J, the natives would admit that two small pieces only (supposed contents unknown) of the Mercury Island had been bought by Webster.

Mr. Webster, in a letter of 4th November, 1840, to Mr. J. H. Williams, United States consul at Sydney, states: "I have another island, called the Mercury Island, which contains about 16,000 acres." In the claim to the commissioners he states the area to be 6,000 acres, the actual area on survey being 4,090 acres.

4. Statement, page 39, last par.—"As Mr. Webster never got an acre of land in New Zealand from all the extensive purchases he made from the chiefs, and as the British Government seized and sold all the lands conveyed to him by the chiefs for his own use and benefit, in which British subjects were not interested, it becomes impossible to find any ground for the statement of Lord Carnarvon, that he 'not only had no claim to compensation, but that he had been treated with exceptional liberality.'"

\* \* \* \* \*

"The facts which explain this statement are as follows: While Mr. Webster was engaged in purchasing lands from the chiefs, some of his friends in Australia, who were British subjects, employed him to purchase several tracts of land—in all, about fifteen thousand acres—for them. They furnished the means, and he took the titles in his own name, being on terms of peculiar friendship with the chiefs, and afterwards admitted the rights of those British subjects in the presence of the commission, who proceeded to confirm the titles to them."

Answer. Webster had grants made to himself of 5,000 acres, besides the grants

\* Made by the Government when negotiating with the natives for the purchase of the Piako block of land, with a view to a settlement of the disputes about the land claimed therein.

for 12,655 acres, which were made at his request and upon his sworn evidence, to parties who had purchased from him, over and above a grant to himself of 8,080 acres at the Great Barrier Island, and of 8,119 acres of the same island to Abercrombie, and 8,070 acres to Nagle, his partners. Webster did not, in any single case, act as the agent for others, as can be seen from the terms of the caveat lodged by Messrs. Chambers and Holden, printed on page 5, in relation to claims made by derivative purchases from Webster. The Great Barrier claim was made in the names of Abercrombie, Nagle, Webster, and Co., in partnership. A gross award of 24,269 acres was made in favour of the partners, and subdivided by partition as aforesaid between the individuals forming this partnership. Total awards to Webster himself, 13,080 acres. Gross awards to Webster and his assigns in respect of all his claims, 41,924 acres.

5. Statement, page 40, par. 7.—“He insists that his rights have been over-  
slighted because of his repeated refusals to renounce his allegiance to the United States and to become a British subject.”

Answer.—The correspondence previously printed on page 6 shows that the governor required Mr. Webster to declare whether he advanced his claims as a foreign subject or a British subject; and his reply and subsequent conduct proves that he elected to come before the commissioners as a British subject. Mr. Webster did not become naturalized in the colony. There was no naturalization ordinance passed in the colony before 1845.

6. Statement, page 40, par. 9.—“At Great Barrier Island there was then a whaling station much resorted to by fishermen, and Mr. Webster sought to convey it to the United States as a valuable acquisition.”

Answer.—The Great Barrier Island contains by survey 71,800 acres. Webster and his partners claimed 20,000 acres thereof only. An award in their favour was made for 24,268 acres, as above stated. The remainder of the island continued in the possession of the natives. Both Webster's partners and co-owners in part of the island were British subjects, William Abercrombie being a member of a firm of English merchants at Sydney, and Jeremiah Nagle being master of the British ship *Neptune*, of Liverpool, trading between England and Sydney. How could Webster, under these circumstances, pretend to convey the whole island to the United States, and especially by a letter to the United States consul dated 4th November, 1840, the colony having been proclaimed on the previous 14th January?

7. Statement, page 42, par. 7.—“British subjects now hold lands under the same conveyances made to him, confirmed by the commission, as to such subjects, which have been treated as if they had no existence when invoked in support of Mr. Webster's rights.”

Answer.—The evidence in Webster's claims clearly shows that no person obtained any land in Webster's claims except through Webster, and after proof that Webster had made a bona fide purchase from the natives, and had sold the land to the person claiming it.

I have to remark that in the year 1874 the Secretary of State, in a despatch to Governor Sir James Fergusson, required a report on Mr. Webster's claims, in order to reply to a complaint made Mr. L. C. Duncan, on behalf of Mr. Webster, that he had been treated with injustice in their adjudication.

Mr. O'Rorke, the then commissioner, and at present Sir G. M. O'Rorke, speaker of the house of representatives, furnished to the governor, for transmission to the Secretary of State, a full report on the claims, together with an opinion from Mr. Whitaker as to the accuracy of such report (who had been personally acquainted with all the details of Mr. Webster's land transactions at the Piako) and a further report from Dr. Pollen, then colonial secretary, who had been personally acquainted with Mr. Webster in New Zealand. (See Appendix A.)

In answer to the despatch transmitting these documents, the Secretary of State expresses his opinion that Mr. Webster had been treated throughout with exceptional liberality; and encloses a letter from Mr. L. C. Duncan withdrawing from the position he had assumed as Mr. Webster's advocate.

I have also to add that in the year 1878 I held the office of land claims commissioner, and in that capacity I had finally to determine upon the enlarged acreage to be granted to Sir Frederick Whitaker in respect of the allowance for survey and fees in connection with Webster's Piako Claim 305k; that all the documents relating to Webster's claims came under my personal review, and I became intimately acquainted with all the facts connected therewith.

From a perusal of the documents included in this memorandum, I can not but feel assured that the United States Senate will feel satisfied, equally with Lord Carnarvon, that Mr. Webster has been treated with very liberal justice, espe-

cially seeing that awards were made in his favour, or in favour of his acknowledged assigns, of every single acre of land which the native owners admitted he had justly bought from them. More than this he could not have received, whether claiming as a British subject or as an American citizen.

ROBERT STOUT.

WELLINGTON, 15th August, 1887.

## APPENDIX A.

### FORMER CORRESPONDENCE AND REPORT ON MR. WEBSTER'S CLAIMS.

*The Secretary of State to the Governor of New Zealand.*

DOWNING STREET, 1st June, 1874.

SIR: With reference to my predecessor's despatch No. 75, of the 30th October, 1873, I transmit to you copies of correspondence with Mr. L. C. Duncan in regard to Mr. W. Webster's claims to lands and other property in New Zealand. I shall be glad to receive a report on these claims without loss of time, in the event of your not having already replied to my predecessor's despatch.

I have, etc.,

CARNARVON.

Governor the Right Hon. Sir JAMES FERGUSSON, Bart., etc.

[Enclosure.]

*Mr. Duncan to the Earl of Carnarvon.*

47, FINSBURY CIRCUS, E. C., LONDON, 23rd May, 1874.

MY LORD: I have the honour to ask your lordship's attention to the communication addressed by Messrs. Kimber and Ellis, in September of last year, to Her Majesty's principal secretary of state for the colonies, urging the claims of Mr. W. Webster, a citizen of the United States, in respect of certain lands in New Zealand. In a note from the colonial office acknowledging receipt of that communication it was stated that his lordship would "forward a copy of it to the governor of the colony, with a request that the subject may be reported upon." A letter of the 20th February from New Zealand brings Mr. Webster information that about a month previous thereto "the original documents in the Crown office had been referred to the governor, the home Government having written asking inquiries to be made," etc.

Being now charged by Mr. Webster with the conduct of his claims, I respectfully beg leave to direct your lordship's attention, in addition to the foregoing, to the communication of the then envoy extraordinary and minister plenipotentiary of the United States, addressed to the Earl of Aberdeen, at that time (December, 1843) Her Majesty's principal secretary of state for foreign affairs. In that communication the principles are stated upon which Mr. Webster relies for the recognition of his rights by Her Majesty's Government, and for protection for those rights by his own. In the reply of Lord Aberdeen, dated 10th February, 1844, the statement occurs that, "where aliens had acquired lands from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged; but that where a doubt arose whether the alien made a bona fide purchase of the land, the settlers should be treated as any British subject, and his claim disposed of accordingly." Here I ask leave to call your lordship's very special attention to the important circumstance that Mr. Webster "*had* acquired all his lands from the chiefs *prior* to the proclamation of the Queen's sovereignty, and that fact is undisputed." Notwithstanding this undisputed and indisputable fact, it was only after the lapse of many years that about 16,500 acres were awarded to Mr. Webster out of 350,000 acres bought and paid for by him "*prior* to the proclamation of the Queen's sovereignty" over those islands.

I have now to ask your lordship's attention to the reply from the foreign office (dated 30th October, 1873) to the communication addressed by Messrs. Kimber and Ellis in September of that year to the Right Hon. the Earl of Kimberley,

and to request that I may be informed whether it is the view of Her Majesty's present Government that Mr. Webster should be referred to the colonial government to obtain redress for the losses and injuries he has sustained from the acts of official personages executing the orders of the *home* Government, or acting in their official capacities *ultra vires*. Mr. Webster desires respectfully to state that he should be obliged to decline to recognize the colonial government as his debtor in respect of the claims put forward by him, and that he may know precisely the views of Her Majesty's Government upon this point, in order to determine his own course, he begs that your lordship will relieve him from the doubt raised in his mind by the somewhat ambiguous language of the last paragraph of Mr. Herbert's note. At the period of life he has now reached Mr. Webster can ill afford to abide delays, and, as he has remained in London until this time, in the hope that the report from the governor would be sent forward without undue delay, and that upon receipt of it Her Majesty's Government would be not only ready and willing, but also prepared, by a sufficient acquaintance with the facts, to deal with his claims, he hopes the arrival of such report at the foreign office will be kindly notified to him through the undersigned. While yet in England Mr. Webster is desirous that your lordship may, if possible, indicate a *modus agendi* which would admit of his personally bringing this most serious business to a speedy conclusion in some manner alike just, honorable, and satisfactory to Her Majesty's Government and to himself. Finally, I beg leave to submit herewith, for convenience of reference by your lordship, a printed copy of the statement of Mr. Webster's case as laid before the right honourable the Earl of Kimberley by Messrs. Kimber and Ellis.

I have, etc.,

L. C. DUNCAN.

The Right Hon. the EARL OF CARNARVON,  
*Her Majesty's Principal Secretary of State for the Colonies.*

*The governor of New Zealand to the Secretary of State for the Colonies.*

GOVERNMENT HOUSE, WELLINGTON, 1st August, 1874.

MY LORD: According to my promise in my despatch No. 55, of yesterday, sent by way of San Francisco, I have now the honour to transmit copies of minutes upon the correspondence transmitted by the Earl of Kimberley in his despatch No. 75, of the 30th October, 1873, and by your lordship in your despatch No. 23, of the 1st June, 1874, by the commissioner of crown lands and the colonial secretary, the latter of whom knew Mr. Webster during the period of his residence in New Zealand, and is well qualified to judge of the merits of the case. These ministers set forth the entire history of the transactions between the Government and Mr. Webster.

(2) The most important point appears to be his present claim that his case should have been considered strictly as that of an American citizen. The records show that he elected to have his claims referred to the commission appointed for the purpose of adjudicating upon such claims to land not granted by the Crown, after he had been informed by the governor that he could only consent to their being "laid before the commissioners in the usual way" if "they were lodged as a British subject." Mr. Webster, indeed, made no such explicit declaration, but replied, I am told, after some hesitation, "I wish my claims to be laid before the commissioners, and am willing to take my chances with all others." He appeared and prosecuted his claims before the commissioners. There is no record of his having made any protest against their awards, and he must be held to have accepted them, as he received the Crown grants made in pursuance thereof, and sold or mortgaged all the land so granted. His claims were, in fact, treated with exceptional indulgence, and admitted to a larger extent than those of any other individual.

(3) I shall, should your lordship deem it necessary, transmit certified copies of the documents quoted in my enclosures. They are very voluminous, and I think that the correct quotations will demonstrate sufficiently, especially in the absence of any representation from the Government of the United States, that Mr. Webster has no rights as an American citizen, and that his claims were properly decided by competent authority.

I have, etc.,

JAMES FERGUSSON.

[Memorandum for his excellency the governor, by the commissioner of land claims in respect of certain land claims in New Zealand of Mr. William Webster.]

The information required concerning this claim relative to the points mentioned in the report by the emigration board, enclosed in despatch No. 75, is given herein, taking the various points seriatim:

1. "The dates and extent of the several purchases made by Mr. Webster, and the consideration for each."

The information required under this head will be found in the schedule attached hereto.

2. "The claim preferred by him to the first commission, and the grounds on which his grant was limited to 2,560 acres, and on which he was denied the benefit of Lord John Russell's instructions of March, 1841."

In a letter dated the 20th July, 1841 (marked 1), Mr. Webster first preferred his claims in the following terms: "I have sent seven copies of titles to land and seven statements of purchases, which I beg you will lay before the commissioners, for examination only. I have sent all my claims to land in this country before the United States Government, by the advice of the American consul of Sydney: and I trust his excellency Governor Hobson will not suffer any of my lands to be interfered with until the question is settled." He further states that he was willing to come forward to prove all his purchases, but requested to be allowed time in which to do it. He trusted that when his claims were examined the commissioners would understand that they were all bought before any government was formed in New Zealand.

Governor Hobson minuted Mr. Webster's letter as follows: "Mr. Webster must distinctly state whether he claims land in New Zealand as a British or an American subject. If the former, his case must take the course the law prescribes; if the latter, his claims for land must depend upon the decision which may be arrived by the joint consent of both governments. But Mr. Webster in seeking assistance from a foreign government must relinquish all the rights of a British subject, such as the ownership of a British vessel, which I understand he now possesses.\* [If] the claims of Mr. Webster be lodged as a British subject,\* [I will] consent to their being laid before the commissioners in the usual way."

Mr. Webster was informed accordingly, and in his reply dated the 3rd October, 1841 (marked 2), said, "I wish my claims to be laid before the commissioners, and am willing to take my chance with all others."† His claims were then referred to the commissioners in the usual way.

From the attached schedule of Webster's claims, it will be seen the commissioners, Godfrey and Richmond, awarded 7,541 acres to claimant, namely: In case 714 (305)‡, 250 acres; case 715 (305A), 250 acres; case 716 (305B), 550 acres; case 717 (305C), 800 acres; case 722 (305G), 1,944 acres; case 724 (305I), 1,187 acres; case 726 (305K), 2,560 acres; total, 7,541 acres.

But, on the 18th December, 1843, in reporting on Claim No. 726 (report marked 3), the commissioners further reported that the awards should be reduced in the aggregate to the maximum grant of 2,560 acres, the reason being that clause 6 of "The Land Claims Ordinance, 1841," Session I, No. 2, 9th June, 1841, provides that "no grant of land shall be recommended by the said commissioners which shall exceed in extent 2,560 acres, unless specially authorised thereto by the governor, with the advice of the executive council."

3. "On what grounds the second commission altered the previous decision in his case."

The second commission (R. A. FitzGerald, commissioner), appointed under "The Land Claims Ordinance, 1844," Sessions III. No. 3, having been authorised, by a minute of the executive council, dated the 10th April, 1844, recommended an extension of the award of the previous commission on the following grounds, given in a memorandum dated the 22nd April, 1844 (marked 4): (1) That the outlay of Mr. Webster on his land claims amounted to £7,787 13s., which, according to the scale of valuation in the land claims ordinance, would entitle him to be considered as having paid for 50,904 acres, and, even limiting his outlay to the

\*Original torn.

†Mr. Webster avoids a definite answer to the governor's question whether he claims as a British or an American subject.

‡In explanation of the dual numbers used in this report, it should be stated that in the interval between 1841 and 1856 most of the original claimants had sold their claims or some of them, so that the system of including all of the claims of the same owner into one case under the same number with a differential letter for each separate claim, adopted by the first commission, was no longer applicable. Commissioner Bell therefore renumbered the whole series of cases, giving to each claim therein a separate number, and so that the 459 cases of the first commission became 1,049 claims under the third commission.

mere payments to the natives, he would be fairly entitled to 17,950 acres. (2) That, considerable sales of land having been made by him on the faith of all his valid purchases being recognised by the Crown, he would be likely to be overwhelmed with lawsuits, and subjected to great losses, if not treated with great liberality by the governor (Captain Fitzroy).

For these reasons Commissioner FitzGerald recommended that there should be granted to Mr. Webster himself 5,000 acres, and to purchasers from him 12,655 acres, in all 17,655 acres. The governor approved of these recommendations, and the grants were issued on the 1st May, 1844.

In Claim No. 36 (32), of Abercrombie, Nagle, Webster and Co. (report marked 5), the first commission recommended no grant, on the ground that the claimants had already received the maximum grant of 2,560 acres. Governor Fitzroy queried this award, and Commissioner FitzGerald replied that they had received grants "nowhere as a company, and only Webster individually."

The case was brought before the executive council on the 18th June, 1844,\* and it was submitted for the consideration of the council that, according to the report of the commissioners, the claimants had validly purchased a considerable part of the Great Barrier Island, but as one of them, Mr. Webster, had already been awarded a large grant upon his other claims, the commissioners had not awarded any grant in respect of this claim to either of the parties; that the case was one of extreme hardship, and that a benefit would accrue to the colony by awarding a grant of a part of the Barrier Island to enable the claimants to proceed with their mining operations, upon which much capital had already been expended. The council were unanimously of opinion that a grant should be awarded of part of the Barrier Island.

Governor Fitzroy gave instructions that all that part of the island which the commissioners had reported to have been validly purchased should be granted to the claimants: and on the 6th July, 1844, grants were issued as follows, namely: To W. Abercrombie, 8,119 acres; to J. Nagle, 8,070 acres; to W. Webster, 8,080 acres; total, 24,269 acres.

4. "The judgment of the commission on the title-deeds which he is said to have left in their hands when he quitted the colony in 1847."

The title-deeds said to have been left by Mr. Webster in the hands of the commissioners can only be those connected with the claims reported upon by them, for Mr. Webster asserts he proved all his claims to the satisfaction of the commissioners: and it has always been the practice of the Court of Claims that the original deeds of purchase should be deposited and recorded in that court.

Of the fourteen claims preferred by Mr. Webster, the commissioners reported that in eight† claims—714 717, 722, and 724-726 (305-305C, 305G, and 305I (305K))—bona fide purchases had been made: in one claim 723 (305H) the purchase was not made from the rightful owners: in one claim 727 (305M), the purchase was not completed at the date of Sir G. Gipp's proclamation, 14th January, 1840. Four, 718-721 (305D, 305E, 305F, and 305L), were withdrawn by the claimant.

In the case of Abercrombie, Nagle, and Webster, claim No. 36 (32), the commissioners reported a bona fide purchase; and in claim No. 31 (29B), of Peter Abercrombie, in which Webster had sold the land to claimant in 1839, that, the claim being derived from W. Webster, to whom the maximum grant of 2,560 acres had been awarded, no grant could be recommended, and no expression of opinion as to the validity of the purchase was given.

The records of the land claims court furnish no explanation of Mr. Webster's omission to appeal to the home Government: but it would appear from them he had no grounds whatever for making any appeal. When Mr. Webster quitted the colony in 1847 he could have had no interest in any of his claims, for he had sold the whole of the land granted to him, or awarded in seven of his claims, in or prior to the year 1844: and the land in the other, the Great Barrier claim, was mortgaged, and fell into the hands of the mortgagees.

The claim of Mr. Webster in the Bay of Plenty, of which it is alleged the Government took possession and felled spars for the use of Her Majesty's navy to the value of £8,000 to £10,000, appears to be No. 723 (305H), concerning which the commissioners reported that it had not been purchased from the rightful owners.‡ In the evidence of one of the native chiefs opposing this claim of Webster's the following passage occurs: "When Captain Wood, in the *Torotoie*, Pehi and Hokianga (the sellers to Webster) came to Tauranga to ask me and my party to go with them to drag out spars from this land for Captain Wood

\* Extract from the minutes marked 6.

† Vide schedule and commissioners' reports.

‡ Vide report—evidence marked 7.

in order that both parties might obtain payment, we consented that some of our party who lived at Tuhua (Mayor Island) should go."

In the appendix to Commissioner Bell's report on the land claims (Appendix, H. R., 1863, D. No. 14), the final adjudication upon Mr. Webster's claims under the land claims settlement acts, 1856-'58, will be seen.

Mr. Webster's estimate of the extent of some of his claims has varied considerably, as will appear from the following comparison of area as stated to the Government in Sydney and Auckland, respectively:

	Sydney.	Auckland.
	<i>Acres.</i>	<i>Acres.</i>
Claim No. 715 (305A) .....	600	250
Claim No. 717 (305C) .....	2,500	800
Claim No. 722 (305G) .....	40,960	10,000
Claim No. 726 (305K) .....	100,000	80,000

It may be remarked that in two of Mr. Webster's claims, those at Point Rodney and Piako, complications with the natives have arisen and quiet possession can not be obtained. Mr. Webster sold the Point Rodney claim to a Mr. Dacre in 1844, who took possession without opposition. In 1859 some natives set up a claim to a portion of the land which was not admitted by the Government or Dacre, but the native opposition to Dacre's occupation of the land gradually increased until in 1862 they drove off a tenant of Dacre's and some woodcutters. The Government endeavored to induce the natives to relinquish their claim but without avail. The natives took possession of the land, and have, or had in 1871, several large settlements and cultivations upon it, and it is stated by the superintendent of Auckland that any attempt to remove them would require to be made with an armed force. The Government, being unable to give Dacre quiet possession, ultimately issued scrip in exchange for the land to the amount of £1,458, which Mr. Dacre received.

Concerning the Piako claim, Commissioner Bell states, in his award dated the 26th September, 1861 (marked 8): "It is certain that, as regards the Piako claim, notwithstanding the evidence before Commissioner Godfrey in 1842, the natives would never have agreed to give up possession to the extent Webster claimed to have purchased. When Johnson\* tried to go on the land comprised in his grant (for 1,280 acres) he found serious obstructions and difficulties; and as to the residue, the papers recorded in the case show that quiet possession was, ten years ago, certainly not to be had. From time to time the natives offered land for sale to the Government, nominally as new blocks, but really including the greater part of the claims of Webster and another man named Cormack, and in the years 1853-'54 installments were paid on the land thus offered to the amount of £750, whereof £550 related to the land alleged to have been bought by Webster."

The land purchase commissioner for the Piako and Thames district reported in 1856-'57, with respect to Webster's claim, in the following terms: "With regard to Webster's purchase, I could do nothing, as I had no names to go by with regard to the boundaries, and a long time has elapsed since the purchase. Moreover, the Ngatibaurea, who, as vassals of the Ngatipaoa at the time of the purchase by Webster, did not then dare to say anything, have now, from the decline of the influence of the chiefs, come forward and denied the sale of the frontage from Mauhora to Angapunga stated to have been purchased by Webster: and declare his eastern boundary to be that laid down upon the accompanying plan. I have also shown in this plan what they state to have been his western or back boundary. In consequence of the facts above stated, and from the frontage to the river having been supposed to be twice its actual length, the purchase by Webster turns out to be only about six thousand acres. They have refused the sum offered yesterday (£50, on the 10th November, 1857), because they did not consider it sufficient, and also because they maintain that some payment ought to be made by Government on account of Webster's purchase. With regard to this purchase, they have been most consistent in asserting that, though their names were signed together in token of their assent, and their evidence before the commissioners' court went to prove that the purchase was a bona fide one, still they were induced to act thus by the promises and representations of Web-

\* Johnson purchased from Webster a portion of his claim.

ster, and that at that time they hardly knew the importance of the steps they were taking. I may observe that the sum promised by Webster was five times the amount paid by him; it is needless to state the promise was not kept. \* \* \* I had one continued discussion with the natives with regard to Webster's claim, but they were always most consistent, ignoring entirely the boundaries as laid down in any documents to which I had access. From all that I have seen, I am inclined to think that the natives are in the right—at any rate, far more so than the European in this instance. The land included in Webster's claim that was retained by them south of Pouriuri amounts to about three thousand acres. Out of this I have since purchased and paid for finally about twelve hundred acres."

In 1857 the purchase by Government of the Piako block was completed, and among his remarks with regard to it Commissioner Bell says: "A more careful examination of the area which the natives admitted was Webster's showed that out of the 18,000 acres included in the survey there were about 7,500 acres so admitted to have been formerly sold, instead of 6,000 as estimated by Mr. Hay at first."

The Crown grants already issued in this claim having been called in and cancelled under the land-claims settlement acts, 1856-58, the Government were obliged under those acts to make good the title of the claimants to the areas specified in the cancelled grants, together with an additional sixth. To do this would take much more than the area allowed by the natives to have been sold to Webster; and Commissioner Bell, referring to subdivisions A and B of section 23 of the land-claims settlement act of 1856, says: "The boundaries described in the grants being of more than sufficient extent, the grantees were consequently entitled to the award of quantity, and no discretion was left to me."

Mr. Bell accordingly directed that the claimants to the land should select land to the extent of 14,319 acres within the boundaries included in the settlement of the Piako block made by the Government in 1857.

Mr. Bell further says: "I do not consider it reasonable to require an immediate selection, as no one could be expected to commence occupation at Piako till the restoration of peace and order." To this day the position of native affairs at Piako has remained such that no survey of these selections could be attempted.

The correspondence with Mr. Hamilton, private secretary to Governor Fitzroy, referred to by Messrs. Kimber and Ellis, is not recorded in the land claims court, but will probably be found among the archives of Government House.

All original records in Mr. Webster's claims are forwarded herewith, with the more important documents duly noted.

I have observed a note of Mr. Webster's appended to his statement of seven claims, attached to his letter of the 26th July, 1841 (No. 1), in which he says: "There are thirteen other pieces of land bought by me, and the titles are missing or taken away, but as soon as they can be\* [found] the particulars will be sent in. The whole of my different purchases amount to twenty-seven pieces of land." It is to be presumed that these missing documents were not found; at any rate, the claims which they represented were not preferred to the commissioners, and undoubtedly had they been they would have been disallowed.

Upon reviewing the whole case, it would seem that, though Mr. Webster did not "distinctly state" whether he preferred his claims as a British or an American subject, the plain inference to be deduced from his expression, "I wish my claims to be laid before the commissioners, and am willing to take my chance with all others," is that he did so prefer them as a British subject. It is evident that it was so understood at the time, for Mr. Webster, in his evidence before the commissioners in preferring his claims, in no instance appears to have alluded to his rights as an American citizen; nor, although he remained in the colony about three years after the settlement of his claims by the second commission, did he ever make them a ground for preferring any claim upon the Government.

The area in Mr. Webster's claims has been greatly overstated, as a reference to the column "Area surveyed, in the appendix to Mr. Bell's report (Appendix H. R. 1863, D. No. 14) will show: and, as a total area of 25,735 acres was granted in his claims by the second commission, it would appear that Mr. Webster was treated with excessive liberality—on a scale indeed not accorded to any other claimants in the whole history of the land claims court.

Before closing this report in respect of purchases made from the aborigines by Mr. Webster before New Zealand became a British colony, I desire to summarize the facts with regard to the Piako claim. It appears from the papers

that Mr. Webster originally claimed 80,000 acres at the Piako; that he sold one-half—40,000 acres—of his alleged rights to Mr. Peter Abercrombie, and subsequently 25,820 acres to various other person. The Piako claim was allowed, and, under the recommendation of the second commission, 12,674 acres were granted to him and those who purchased from him, and he subsequently sold and conveyed to a purchaser his own portion. But it was afterwards found—upon the survey of the Government purchase at Piako—that the area admitted by the natives to have been purchased by Webster amounted to only 7,500 acres; while under the existing land-claim laws an award to the extent of 14,319 acres has been made, so that the colonial government has been at a considerable loss in connection with the claim.

I regret the delay that has occurred in furnishing a report upon this case, but I deemed it necessary to take the papers with me to Auckland to inquire into it there.

G. MAURICE O'RORKE,  
*Land Claims Commissioner.*

COURT OF CLAIMS, *Wellington, July 21st, 1874.*

NOTE.—The inclosures referred to in this report are not printed herewith: the information therein will be found in the insertions to the memorandum printed in the earlier part of this document.

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*Opinion of Mr. Whitaker on foregoing report.*

The draft report appears to me to have been carefully compiled, and, with one omission, to give a correct and sufficient account of Mr. Webster's land transactions as brought before the Government in respect of purchases made from the aborigines before New Zealand became a British colony. The omission I refer to has reference to the Piako claim. It appears from the papers that Mr. Webster originally claimed 80,000 at the Piako; that he sold one-half of it, 40,000, to Mr. Peter Abercrombie, and subsequently 25,820 acres to various other persons; that the whole block is found to contain only 18,000 acres, and that the quantity admitted by the natives to have been purchased by Mr. Webster amounts only to 7,500 acres. It should, I think, be added to this that the Piako claim was allowed, that 12,674 acres were granted to him and those who purchased from him, and that he subsequently sold and conveyed to a purchaser the portion granted to him.\*

Although it is true that Mr. Webster, when required to do so, did not distinctly state whether he preferred his claim as a British or American subject, yet he distinctly elects to be treated in the same way as British subjects, by stating it to be his wish that his claims should be laid before the commissioners, and that he was willing to take his chance with all others, by appearing before the commissioners when his claims were referred, as wished by him, and prosecuting them, and by accepting the commissioner's awards, receiving the Crown grants made in pursuance of them, and selling or mortgaging all the land thus granted to him.

There is no doubt that Mr. Webster was treated with greater liberality than any of those he was willing to take his chance with, and I cannot see that he has any reasonable claim on the British Government, imperial or colonial.

FREDK. WHITAKER.

20th June, 1874.

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[Memorandum for his excellency the governor—Mr. William Webster's claim.]

I knew Mr. Webster during the period of his residence in New Zealand, from January, 1840. He was what was then called a "trader" on the coast, and was known to represent or to be supported by Sydney merchants.

Towards the close of the year 1839, when it became certain that the sovereignty of New Zealand was about to be acquired by Great Britain, Mr. Webster, as did

\* The draft report was amended accordingly.

many others, dealt largely with natives for land, or rather for land claims. There was then no way of ascertaining the right to land of the natives who took "trade" for their signatures; there was no survey, and the estimate of area within the boundaries, when any boundaries were defined in the deeds of conveyance, was almost always excessive—in many cases ridiculously so. Hence the exaggerated character of some of the claims.

The early land purchases, which were made with deliberation and care and in accordance with native usage, were rarely questioned: but those which were made in haste immediately before January, 1840, and, as it were, more for the purpose of getting up a "claim" than of acquiring a title, were commonly repudiated by the native owners of the land. Some of Mr. Webster's claims are in this category.

Mr. Whitaker, of Auckland, who has a derivative title through Mr. Webster to a large block of land in the Piako district, has not to this day been able to get possession from the natives. It will be necessary, in order to keep the faith of the Crown (as the land in question was awarded to Mr. Webster by the land claims commissioner), and to preserve the peace of the country, either to extinguish the native title to this land by purchase or to find for Mr. Whitaker an equivalent elsewhere. A proposal with a view to settlement of this claim is now before this Government.

Mr. Webster's failure was, as I recollect, of the usual commercial character, he was already in difficulties, as shown by his arrest in Sydney in 1840,\* and his insolvency was completed in the financial crisis of 1842 '43 in New South Wales, by which his principals there were affected. His misfortune was never, so far as I know, until now attributed to the action of the colonial government or of the Imperial Government. If any such complaint had been made in the early days of settlement, I think that I must have heard it. I do not think that it would have been made in the presence of any person familiar with the facts. It may at present be regarded as a lawyer's plea merely, on his client's behalf.

DANIEL POLLEN.

29th July, 1874.

[Despatch from the secretary of state to the governor.]

DOWNING STREET, 28th November, 1874.

MY LORD: With reference to Sir J. Fergusson's despatch No. 57, of the 1st of August, transmitting reports by the commissioner of crown lands and the colonial secretary on Mr. W. Webster's alleged claim to certain lands in New Zealand, I enclose, for your information and for communication to your ministers, a copy of a letter which I have caused to be addressed to Mr. L. C. Duncan on the subject, together with a copy of the letter which I have received from him in reply.

I have, etc.,

CARNARVON.

The Most Hon. the MARQUIS OF NORMANBY, K. C. M. G., etc.

[Enclosures.]

*Mr. Herbert to Mr. Duncan.*

DOWNING STREET, 17th November, 1874.

SIR: With reference to your letter of the 23rd May, 1847, and to the reply from this office of the 1st of June, I am directed by the Earl of Carnarvon to inform you that his lordship has received the report from the governor of New Zealand which he was called upon to furnish upon Mr. Webster's claims in respect of certain lands in New Zealand.

Lord Carnarvon desires me to inform you that, this matter having been most carefully inquired into, the only conclusion which his lordship can come to is, that not only has Mr. Webster no claim to compensation, but that he has been treated throughout with exceptional liberality.

I have, etc.,

R. G. W. HERBERT.

L. C. DUNCAN, Esq.

\* See Mr. Dacre's affidavit in printed statement.

*Mr. Duncan to Mr. Herbert.*

47 FINSBURY CIRCUS, LONDON, 19th November, 1874.

SIR: I have the honor to acknowledge the receipt of your communication of yesterday referring to one addressed by me to the colonial office on the 23rd May of this year.

It is proper that I should take this occasion to say that, since the date of my previous note, I have been thoroughly convinced that Mr. Webster, the individual referred to therein, is a person in whom no confidence whatever is to be placed. I regret that, deceived by his specious manner and plausible story—as no doubt many others have been—I should have caused the colonial office of Her Majesty's Government the trouble of investigating his claims anew.

I have, etc.,

L. C. DUNCAN

ROBERT G. W. HERBERT, Esq.

## APPENDIX B.

### RESOLUTIONS ADOPTED IN THE SENATE OF THE UNITED STATES OF AMERICA ON MR. W. WEBSTER'S LAND CLAIMS IN NEW ZEALAND.

26TH JANUARY, 1887.

*Resolved by the Senate,* That, after due examination of the matters presented in the petition of William Webster, and the evidence brought to their attention in support of his claim for indemnity from the British Government for lands in New Zealand, purchased by him in good faith from native chiefs, and duly conveyed to him before the Government of Great Britain acquired the sovereignty over that country by a treaty made with said chiefs, the Senate of the United States consider that said claim for indemnity is founded in justice, and deserves the cognizance and support of the Government of the United States: and that said claim, as a claim for money indemnity, was not presented by the United States to Great Britain prior to September, 1858.

*Resolved,* That the President is requested to take such measures as, in his opinion, may be proper to secure to William Webster a just settlement and final adjustment of his claim against Great Britain growing out of the loss of the lands and other property in New Zealand of which he has been deprived by the act or consent of the British Government, and to which he had acquired a title under purchases and deeds of conveyance from the native chiefs prior to the 6th February, 1840, and prior to any right of Great Britain to said islands.

### REPORT OF THE COMMITTEE.

The Committee on Foreign Relations, to whom was referred the petition of William Webster, a citizen of the United States, relating to his claim against the Government of Great Britain, respectfully report:

The petition discloses and the evidence found in public records heretofore submitted to Congress and to the Department of State supports the claim of William Webster to indemnity for the seizure and sale, under the authority and direction of the British Government, of certain large bodies of land in New Zealand, the rightful property of said Webster.

The several tracts of land claimed by the petitioner are designated by red lines drawn on the chart found in Appendix No. 1,\* which accompanies this report, and are estimated as containing five hundred thousand acres.

William Webster claims these several tracts of land under regular deeds of conveyance to him, made by several New Zealand chiefs, exercising full sovereign powers over their respective tribes at the time and long prior to the dates of the conveyances.

The execution of these deeds has been proven before a commission appointed by the British Crown, which sat at Auckland. The boundaries of Webster's lands

\*The appendices to the report are not printed herewith.

are marked upon the chart found in Appendix No. 1 to this report, and each tract is numbered and lettered.

Mr. Webster produced his deeds before said commission and the chiefs who executed the same, and they established, as did other witnesses, the execution of the deeds to the lands claimed by him, and that he paid the chiefs and tribes a consideration for the purchase amounting, in the aggregate, to more than \$70,000. Some of these deeds have been lost, without the fault of Mr. Webster, and others, possibly all of them, are of record in some form among the archives of the commission. Neither the Government of Great Britain or New Zealand has ever disputed the execution of these deeds, or their consideration, or that they were made by tribal chiefs who had full sovereignty at the time within the limits of their respective territorial dominions.

So the committee assume, with confidence, that there was no flaw in the title of Mr. Webster to the lands described in these conveyances, and that these chiefs could make valid conveyances of them, whether by deed to private owners, or by treaty to the British Government, or to any other power.

All the conveyances to Webster are of older date by several years than any claim of Great Britain to the ownership of any lands in New Zealand, or to sovereignty and dominion over that country. They were made before Great Britain attempted to colonize that country with her subjects, or to assert any ownership of lands in those islands, either by treaty or by force. The islands of New Zealand at the time these deeds were made to Webster, and at the time that Great Britain by treaty acquired the sovereignty of the country (on the 6th February, 1840), were under the sovereignty, dominion, and government of a number of the tribes of New Zealand, each of them having territorial boundaries distinctly ascertained and guarded carefully against intrusion by other tribes. They were a warlike people, and were frequently embroiled in conflicts about their respective tribal boundaries, in respect of which they were very jealous of each other.

When Great Britain determined to acquire dominion over New Zealand by treaty, and to acquire that possession by agreement and not by force, she could find no sovereign there with whom to treat respecting the entire country, but made her treaty with the chiefs of each tribe.

Great Britain, in gaining the sovereignty of the country and a qualified ownership in the lands, did precisely what Webster had done long before in getting a title to his lands, and that was, to go to each chief of each tribe and negotiate with him as a sovereign ruler within the limits of his own territory. The same chiefs that had conveyed these lands to Webster, for a valuable consideration, afterwards conveyed to Great Britain a partial interest in their public lands and political dominion over them, as sovereign, in consideration of the blessings that they would receive in becoming British subjects, as is stated in the third article of the treaty of the 6th February, 1840.

That treaty is copied on pages 6 and 7 of Appendix No. 1. It is the sole basis of any right of dominion, or property, that the British Government has ever acquired in those islands. Whatever may have been the previous designs of that Government as to the acquisition of New Zealand by conquest, the treaty of the 6th February, 1840, placed the chiefs of the tribes, respectively, on the footing of sovereign rulers, and recognized their full right to treat as such with Great Britain or any other power. Proceeding in this way to gain dominion over New Zealand, Great Britain avoided all questions of prior occupancy by citizens of other countries, and committed itself to the duty of treating them with justice.

In 1839 Great Britain empowered Captain Hobson "to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions." The New Zealanders were reconciled to British sovereignty only when that Government, in the treaty, confirmed and guaranteed "to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession." The only qualification of this otherwise unlimited right of ownership in chiefs, tribes, and private owners is, that when any of them shall desire to dispose of or alienate their possessions the chiefs yield "to Her Majesty the exclusive right of preemption over such lands" at prices to be fixed by agreement.

It would be difficult to select language that would more clearly import a perfect ownership in all the soil of New Zealand, in the chiefs, the people as tribes, and as private owners, than that which is guaranteed in the treaty itself. Such a title afterwards acquired by any person in Great Britain in lands to which he

had no title at the time he had previously attempted to convey the land to another would, by relation and estoppel, accrue to such grantee the moment that he got such a deed, or a treaty had granted the title to him. These chiefs had conveyed these lands to Mr. Webster before the date of the treaty. As no exception is made in the treaty of the rights of the persons to whom these prior conveyances had been made, their titles are necessarily confirmed by its terms, unless they were obtained by fraud. So that Mr. Webster, if he had no other claim to the land, would be entitled under the laws of England to the benefit of the express grant in this treaty made to the chiefs from whom he had purchased and who had previously conveyed the land to him.

But his titles were of equal dignity with that afterwards acquired by Great Britain as it relates to the sovereign power from which they are derived. They are of equal validity and force with the title of Great Britain as it relates to the fact of the prior ownership of the land by the chiefs and tribes. They are of equal integrity as it relates to the consideration paid for these lands, and of as much greater moral value as a voluntary contract stands above one made under coercion, in the estimation of all the civilized people. Mr. Webster's title came first in point of time from the same sovereign power that Great Britain expressly recognises in this treaty, and it was purchased for value from people whom he had been at great expense and labour to benefit, and who, even in their savage state, appreciated and were grateful for his kindness. This treaty was preceded by British royal proclamations, prepared and issued just before the treaty was signed. It was under these proclamations that the rights of William Webster and other American citizens in New Zealand were afterwards stricken down. These proclamations are copied in Appendix No. 1.

The jurisdiction asserted in the first of these proclamations is confined to "the establishment of a settled form of civil government over those of Her Majesty's subjects who are already settled in New Zealand, or who may hereafter resort thereto," and the boundaries of this colony are fixed, in the other proclamation, "to comprehend any part of New Zealand that is or may be acquired in sovereignty by Her Majesty." If it is conceded that this is an act of sovereignty over all the islands, its date is the 13th of July, 1839, which is long subsequent to the dates of the deeds to Webster.

The treaty which followed in February, 1840, ceded "to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said confederation of independent chiefs respectively exercise or possess over their respective territories as the sole sovereigns thereof." This admission of the sovereignty of the chiefs on the 6th of February, 1840, ill accords with the right of Great Britain before that date to dispose of all the lands in New Zealand as if they belonged to the Crown, as is done in the second proclamation, issued by Captain Hobson, of date the 30th January, 1840.

The disposition of Webster's lands by the British Government was made under the powers given to the commission appointed by the Crown in the proclamations recited.

The Government of Great Britain assumed the ownership of all lands in New Zealand, and made rules for their disposal on the 30th January, 1840, and declared then that "no titles would be recognised that were not derived from or confirmed by Her Majesty." Afterwards, on the 6th February, 1840, they confirmed by treaty to the chiefs, tribes, and individuals all the lands possessed by them with all their forests and fisheries.

This reservation or confirmation practically covered the whole of New Zealand, for the tribes then claimed to possess as owners all the lands that they had not previously conveyed to other persons, including Webster, and as sovereigns their possession was distinctly affirmed.

Notwithstanding this treaty abrogation of the pretension of universal title in the British Crown to all the lands in New Zealand, which was declared in said proclamations, that pretension has been constantly adhered to and enforced, as against American citizens, through the decree of said commission, and according to the requirements of said proclamations. At this point the question arises whether the lands acquired before the 15th June, 1839, by American citizens in New Zealand from powers admitted by Great Britain to be sovereign inured to the Crown of Great Britain, either in virtue of the proclamations of the 30th January, 1840, or the treaty of the 6th February, 1840. The statement of the question precludes the possibility of an affirmative answer, either as a matter of law or as a question of conscience.

But on this, the turning point in Webster's land claims, the Government of Great Britain has given its answer promptly, and candidly in the negative. In

an official letter of Lord Aberdeen, the British foreign secretary, to Mr. Everett, minister to England, dated the 10th February, 1844, he says:

[Extract.]

*Lord Aberdeen to Mr. Everett.*

The undersigned, Her Majesty's principal secretary of state for foreign affairs, had the honour in his note of the 3d ultimo to inform Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, that he had referred to Her Majesty's principal secretary of state for the colonies Mr. Everett's note of the 26th of December last, relative to the complaints brought forward by several American citizens concerning the position in which they are placed in Her Majesty's colony of New Zealand with respect to the recognition of certain of their titles to lands in that colony, \* \* \* (got) before the assertion of Her Majesty's sovereignty of those islands.

Having now received an answer from the colonial department, the undersigned has the honour to inform Mr. Everett, with reference to the first head of complaint, that, in consequence of certain questions raised by the American consul at Sidney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged: but that where a doubt arose whether the alien made a bona fide purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly.

To this arrangement Her Majesty's Government have since announced their determination to adhere, on the occasion of a reference being made by the governor of New Zealand, on an application from a Belgian settler relative to the claims of the subjects of foreign powers to land. \* \* \* Trusting that these explanations may be satisfactory, the undersigned requests Mr. Everett to accept the assurances of his distinguished consideration.

ABERDEEN.

If the British Government maintain "their determination to adhere" to this arrangement, the only open question in Webster's claim is whether his purchases were made in good faith. The fact of his purchase, the execution of the deeds, the subsequent affirmations of the chiefs made before the commission that they conveyed the lands in good faith and for a valuable consideration, are matters that have either been undisputed or are settled in his favour, as will be presently shown. But it is worth while to consider, before proceeding further, whether the British Crown has any title, under the terms of the treaty of the 6th February, 1840, to any lands previously conveyed by the chiefs to Webster, even if such conveyances are void, or may be avoided, for fraud. The Government, without having passed upon the question mentioned in the instructions of the foreign office to the governor of New Zealand in February, 1844, and without having settled any question connected with Webster's legal or equitable rights, has sold or disposed of all his lands as Crown lands. He has had no day in court, and his lands have been confiscated without a hearing and without notice.

If the conveyances to Webster were not bona fide, his possession of the land was the continuing possession of the defrauded chiefs, and their possession under the terms of the treaty reduced the interest of the Crown in these lands to a mere right of preëmption at a price to be agreed upon. Such a privilege of preëmption gave the Crown no title to these lands until it had purchased them; and its seizure and sale of them was a wrong to the chiefs if Webster had defrauded them, or to Webster if he had honestly acquired the lands.

But the sale of these lands by the Government was, virtually, a final denial of all title in Webster, and closed all courts and tribunals to his legal or equitable demands. Here is a wrong done to an American citizen by the Government of Great Britain, by means of which its treasury has been replenished, and its courts are effectually closed against all redress. The question has, therefore, ceased to be one between a citizen of the United States and any citizen of New Zealand found in possession of the lands which could be settled either in the colonial or the British courts. It is a question to which the Government of Great Britain has made itself a party by claiming the lands of an American citizen, and by seizing them and selling them contrary to its own treaty and laws. This was also

done contrary to its solemn pledge, given to the United States by Lord Aberdeen, that, "where aliens had acquired lands from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged," unless they were not obtained in good faith.

This situation is one that seems to demand the intervention of the Government of the United States. That Webster's claims have been refused consideration upon the state of facts that attended their origin, and should have controlled their decision, is entirely apparent, according to the record evidence in this case. Webster's claims seem to have received no other consideration than that indicated in a letter to him from the governor of New Zealand, which is as follows:

*Hamilton to Webster.\**

GOVERNMENT HOUSE, 10th May, 1845.

SIR: I am directed by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims, marked 305H and 305I, and is sorry to find himself precluded from authorizing any further grant made to you at present, on account of the largeness of the grants already made in your name.

The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

I have, &c.,

J. W. HAMILTON,  
*Private Secretary.*

It is very clear that, while this enunciation of the governor of New Zealand was intended as an indefinite postponement of all further consideration of Webster's claims, it held out to him the hope that some future indulgence might be accorded to him, as an act of grace, in respect of "the lands which you now hold in undisputed possession." Neither the New Zealand natives nor any other person claimed to hold possession of these lands when the treaty of the 6th February, 1840, was made. Or before that time, under any claim or colour of title, or of occupancy, that was adverse to the possession of William Webster.

The governor of New Zealand, in the communication above copied, stated his decision that "claims marked '305H' and '305I'" were disallowed for the present, and all other grants made to Mr. Webster, "on account of the largeness of the grants already made in your [Webster's] name." This refusal to confirm "grants made to" Webster was not attempted to be justified on the ground that "land claims marked '305H' and '305I'" were not in the "undisputed possession" of Webster, but solely on the ground of "the largeness of the grants already made in your [Webster's] name." Then follows the promise, that has not been kept in any sense, that "the land which you now hold in undisputed possession will probably be granted to you eventually."

This was the manner in which the governor of New Zealand complied with the instructions of the British Government as they are stated in the letter above quoted of Lord Aberdeen to Mr. Everett. The disposal thus made of the rights of an American citizen was a mockery of justice and a contemptuous disobedience of the instructions of the Government of Great Britain. That Government, however, at a later date made itself responsible for this summary and unjust disposition of the rights of Mr. Webster, as will appear from a copy of correspondence annexed to this report, marked "Appendix No. 2."

On the 17th November, 1874, Earl Carnarvon, Her Majesty's principal secretary of state for the colonies, cut down all hope of Mr. Webster's success in getting his rights growing out of the assurance made to him by the governor of New Zealand on the 18th March, 1845, that the lands of which he held undisputed possession would be granted to him eventually.

Earl Carnarvon, replying to a letter of Mr. C. L. Duncan, through his secretary, said: "Lord Carnarvon desires me to inform you that, this matter having been most carefully inquired into, the only conclusion which his lordship can come to is that not only has Mr. Webster no claim to compensation, but that he has been treated throughout with exceptional liberality."

As Mr. Webster never got an acre of land in New Zealand from all the extensive purchases he made from the chiefs, and as the British Government seized

\*There are some errors in this letter: among others 305I should read 305J, which relates to the claim of Mercury Island; 305I related to a claim for land at Waiheke Island, which was not disallowed. For accurate copy of letter, see *ante*, page 84.

and sold all the lands conveyed to him by the chiefs for his own use and benefit, in which British subjects were not interested, it becomes impossible to find any ground for the statement of Lord Carnarvon that he "not only had no claim to compensation, but that he had been treated with exceptional liberality." There is no other possible ground for this statement except the statement made by the governor of New Zealand in his letter to Mr. Webster, dated the 10th March, 1845, as to "the largeness of the grants already made in your [Webster's] name."

The facts which explain this statement are as follows: While Mr. Webster was engaged in purchasing lands from the chiefs, some of his friends in Australia, who were British subjects, employed him to purchase several tracts of land—in all about fifteen thousand acres—for them. They furnished the means, and he took the titles in his own name, being on terms of peculiar friendship with the chiefs, and afterwards admitted the rights of those British subjects in the presence of the commission, who proceeded to confirm the titles to them.

These facts were all made known to the commission by Webster when he appeared before them and proved his deeds by the chiefs and others. All the titles made by the chiefs to Webster, and by Webster admitted to be for the benefit of British subjects, were confirmed by the commission. The conveyances made by the chiefs to Webster, in the same deeds and for his own use, have been refused confirmation "on account of the largeness of the grants already made in your name."

Thus his faithful dealing with British subjects was made the pretext for the final denial of his rights: and titles that came through him from the chiefs for the benefit of British subjects were confirmed, while titles that came to him from the same chiefs, included in the same bodies of land and under the same conveyances, have been ignored: and his part of said lands has been seized and sold by the British Government. This is the present situation of the claim of William Webster to compensation from the British Government for his lands in New Zealand, taken and sold by its authority.

Aside from the influence of the principles of international law, which would secure rights of property to private persons in any country the sovereignty of which passed to a new ruler by cession and treaty—by purchase and not by conquest—the terms of the treaty with the tribal chiefs compel the conclusion that no title to the soil of New Zealand passed to Great Britain where the same sovereign power had formerly granted the same land to a citizen of the United States.

But the principles recognized recently in the Berlin conference as to the free state of the Congo, and in other instances, are only consistent with the right of the chiefs of any tribe, however savage, to cede lands to private persons and societies. The sovereignty of a tribe being admitted, all question as to their right to convey their lands disappears. This is conspicuously true as to the New Zealand chiefs, whose rights are expressly admitted in the treaty of cession and merge into the British colonial system, and upon which treaty every land title in the colony is distinctly based, whether accruing to the Crown or to British subjects.

No complaint has been made by the British Government that Mr. Webster has omitted anything required to properly secure his titles to these lands, or that he has ever done anything to forfeit them. He insists that his rights have been overslaughed because of his repeated refusals to renounce his allegiance to the United States and to become a British subject. However true this may be, it is true that lands conveyed to him by the New Zealand chiefs have been confirmed by the authorities to British subjects for whom he purchased them, and thus it is a reasonable conclusion that his foreign citizenship has caused discrimination against his rights that is neither just nor defensible.

Mr. Webster deserved, at the hands of Great Britain and all other civilized people, better treatment. When he was quite a young man he went to New Zealand with a capital of \$6,000, invested in goods suited to trade with that people. He purchased the right to set up a trading-station at Coromandel from the native chiefs. He was the first white man who settled there, or at any point nearer to that place than the Bay of Islands, 150 miles from Coromandel. Pursuing his policy of friendly intercourse with the natives, and learning to speak their language fluently, he soon largely increased his capital by exchanging pork, which he bought from the natives, and ship-timber and other native productions, for such articles as they needed, which he imported to that country.

He bought a cape of land from the native chiefs on or near the present site of Auckland, and built houses and established a trading station there. He was the first white man who settled there, or within a great distance from that point.

As his business increased he purchased other locations and established other trading stations. He established a shipyard at which he built small coasting vessels, in which he entered the shallow bays along the coasts and ascended the rivers to open trade with the natives. In this way he was largely instrumental in bringing the natives into friendly relations with each other, and in diverting their attention from savage warfare to peaceful pursuits. He was the real pioneer of civilization in that section of the country, and was followed by colonies of English people to whom he had opened the way to the interior of the islands. At Great Barrier Island there was then a whaling station much resorted to by fishermen, and Mr. Webster sought to convey it to the United States as a valuable acquisition. His letter containing this offer is set forth in Appendix No. 1. His lands and other property in New Zealand were worth a sum which he estimates at a million dollars at the date of the treaty with Great Britain. When, later, he had been deprived of his property and returned to the United States to assert his rights, he was reduced to poverty.

In a letter dated the 4th November, 1840, by Mr. Webster to I. H. Williams, United States consul at Sydney, New South Wales, and set forth in Appendix 1, he called attention to the proceedings of the British Government in reference to the lands purchased by American citizens, and asked the consul "to make it known to the American Government as early as possible." In the conclusion of his letter he says: "They have not taken any of my lands as yet, but I expect they will take all from me and every other American unless our Government will take it in hand to stop it."

This was the only suggestion Mr. Webster made that he desired any intervention by the United States until September, 1858. His letter had no relation to any indemnity for loss and damage for lands that had been, or were expected to be, sequestered by the British Government. It only had reference to getting titles to his lands, and those of other American citizens, which he feared that the British authorities might refuse to recognize and confirm.

On the 30th January, 1841,\* Mr. Webster wrote to the colonial secretary of New Zealand, and sent him copies of his land titles to seven tracts, and seven statements of his purchases, which he asked should be laid "before the commissioners for examination only." He offered in this letter to come before the commissioners and prove all his purchases. He concluded this letter, which is copied in appendix 1, as follows: "All of it was bought before Her Majesty's government was formed here, and I further consider that all I have has been dearly earned; and I trust that before I am dispossessed of any of it it will be proved who has the best right to it."

The letter of Mr. Webster to Mr. Williams was sent by the latter to our Department of State. On the 14th June, 1858, the Senate, by resolution, called on the President for information as to the claim of William Webster relating to his lands in New Zealand. Replying to that resolution, the President sent to the Senate the statement called a "report" from the Secretary of State in the following form:

[Message of the President of the United States, communicating, in answer to a resolution of the Senate requesting a list of claims of citizens of the United States against foreign governments, a report of the Secretary of State.]

#### *To the Senate of the United States:*

In compliance with the resolution of the Senate of the 14th June last, requesting a list of claims of citizens of the United States on foreign governments, I transmit a report from the Secretary of State, with the documents which accompanied it.

JAMES BUCHANAN.

WASHINGTON, 19th January, 1859.

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\*The proper date is 20th July, 1841. The letter is printed on page 62. *ante*.

*Claim of William Webster.*

[Claims on Great Britain.]

Names of such complainants, citizens of United States, as have preferred complaints to the Executive Departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action, and the amount of satisfaction obtained, if any.
William Webster....	\$78,145	For loss and damage (January, 1840), for so much, paid, laid out, and expended, in cash and merchandise, between the years 1835 and 1840, in purchases of lands and franchises from certain chiefs of New Zealand, and in the improvement thereof, prior to January, 1840, when the sovereignty of Great Britain over the islands was declared, and, so the claimant alleges, his rights and privileges were sequestered by the British authorities. This statement of claim was received October, 1841; and, by instructions, was pressed upon the British Government by the envoy of the United States, 1842 and 1843. It was not presented by the claimant to the London Commission acting under the convention of the 5th February, 1853.	The Government of Great Britain, in reply to the representations of the envoy of the United States, stated that the colonial government of New Zealand was ordered in March, 1841, to recognize and confirm all bona fide purchases made from the New Zealanders by aliens prior to January, 1840; and, in case of want of proof of the good faith of the transactions, such aliens should be dealt with in like manner as British subjects making like claim; which orders and proceedings were recognized and adhered to by the British Government in 1844, in the case of a Belgian claimant. The before-mentioned order of 1841 confirmed to aliens bona fide purchases made prior to 1840, although made at prices less than 5s. sterling per acre, whilst British subjects were required to show payments at that rate in order to be entitled to confirmation of grants of land obtained by them from the natives prior to the proclamation of British sovereignty. Held under consideration.
William Webster, by his counsel, Messrs Anderson, Reverdy Johnson, and J. W. Denver.	6,573,750	For loss and damage and indemnity, for lands purchased from chiefs of New Zealand from 1835 to 1840, and franchises pertaining thereto, and improvements alleged to have been made thereon, which claimant alleges were sequestered and taken from him by the British authorities after the assertion of the sovereignty of Great Britain over New Zealand in January, 1840. The intervention of the Executive of the United States was applied for September, 1858. The archives of the Government record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States, and to have been met by the measures of relief on the part of the British Government	

*Claim of William Webster—Continued.*

Names of such complainants, citizens of United States, as have preferred complaints or claims against foreign governments to the Executive Departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action, and the amount of satisfaction obtained, if any.
William Webster, etc.—Continued.	\$6,573.750	noted in the statement here above next preceding. But the claimant now maintains that the order of the metropolitan government of 1841 was only partially obeyed by the colonial authority, and that the relief apparently conceded by such partial obedience has been made a nullity by the judgment of the colonial court—that no order of the British ministry can be of avail to contravene the fundamental law of Great Britain, that an alien can not take in fee and convey real estate in land by title good in law.	

In a letter of Mr. Blaine, Secretary of State, to Mr. Webster, dated "Department of State, Washington, 21st June, 1881," he says: "I may state generally, however, that upon a very thorough examination of the case recently made by an officer of the Department charged with such duties, it is found that no claim was directly presented by you, or on your behalf, for indemnity, until September, 1858." The entire letter is copied in Appendix 3 to this report.

These two statements are directly in opposition to each other. Without attempting to account for the apparent discrepancy, it is clear that the statement last made is true, because, in the nature of things, the statement made in 1859 could not be true. Mr. Everett did not present or urge any claim of Mr. Webster for indemnity for lands taken from him, nor did Lord Aberdeen make allusion to any claim for compensation. The question whether the lands would be taken from Webster was still open in December, 1843; and under the orders as announced to Mr. Everett by Lord Aberdeen in February, 1843, the obstruction to a confirmation of Webster's title, of which Mr. Everett complained, had been removed, as to the price of 5s. per acre, as far back as March, 1841.

It is not true, as a matter of fact, that Webster, in 1841, had presented any claim for indemnity against the British Government, nor is it true that "the archives of this (the United States) Government record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States." This statement is not supported, but is refuted, by "archives of the Government."

The injustice done Mr. Webster by this untrue representation of his conduct, whoever may have inflicted it, should be now removed. He should have a fair opportunity to have his claim against Great Britain considered on its merits, without the embarrassment of a false assertion that he had abandoned his right to these lands, and had claimed compensation for them in money, before the British authorities had proceeded to finally deny or to ignore his rights. By that report the Senate was misled as to the conduct and the rights of Mr. Webster, and it is due to him that this should appear on its records, and that this embarrassment should be removed.

Your committee are of opinion that Mr. Webster's right to claim indemnity for the lands, purchased in good faith from the native chiefs, is clearly established as being just and complete: and their final sequestration and sale by the British Government, which occurred in 1845, or later, gives him the right to ask the intervention of his government. The British Government has not presented in its correspondence on this subject, or in any order concerning it, that has been communicated to William Webster or his counsel, or to the United

States, any finding of the commission or other official authority of any fact tending to show that the conveyances made to him by the native chiefs were not made in good faith and for a valuable consideration before the treaty of the 6th February, 1840.

That Government, so far as your committee are informed, has never impeached the claim of Mr. Webster on any ground that takes it out of the influence of the express declaration of Lord Aberdeen to Mr. Everett, "that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged." Nor has any fact been stated by that Government which tends to include the claim of Mr. Webster in the category "that, where a doubt arose whether the alien made a bona fide purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly."

British subjects now hold lands under the same conveyances made to him, confirmed by the commission, as to such subjects, which have been treated as if they had no existence when invoked in support of Mr. Webster's rights.

For the further information of the Senate on this subject, your committee submit the papers found in appendices to this report, numbered 1, 2, 3, and 4.

These papers give the reports of committees of Congress, the correspondence with and arguments of counsel submitted to the home Government in Great Britain, the opinion of the law officer of the Department of State, and the affidavit of Mr. Ranulph Dacre, all of which give strong support to the rights claimed by Mr. Webster.

Your committee recommend the adoption of the following resolutions:

*Resolved by the Senate.* That after due examination of the matters presented in the petition of William Webster, and the evidence brought to their attention in support of his claim for indemnity from the British Government for lands in New Zealand purchased by him in good faith from native chiefs, and duly conveyed to him before the Government of Great Britain acquired the sovereignty over that country by a treaty made with the said chiefs, the Senate of the United States consider that said claim for indemnity is founded in justice, and deserves the cognizance and support of the Government of the United States. And that said claim, as a claim for money indemnity, was not presented by the United States to Great Britain prior to September, 1858.

*Resolved.* That the President is requested to take such measures as, in his opinion, may be proper to secure to William Webster a just settlement and final adjustment of his claim against Great Britain, growing out of the loss of the lands and other property in New Zealand, of which he has been deprived by the act or consent of the British Government, and to which he had acquired a title under purchases and deeds of conveyance from the native chiefs prior to the 6th February, 1840, and prior to any right of Great Britain to said islands.

(Appendices not printed herein.)

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[Senate Report. No. 1736. Forty-ninth Congress, second session.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report (to accompany petition of William Webster):

The Committee on Foreign Relations, to whom was referred the petition of William Webster, a citizen of the United States, relating to his claim against the Government of Great Britain, respectfully report:

The petition discloses and the evidence found in public records heretofore submitted to Congress and to the Department of State supports the claim of William Webster to indemnity for the seizure and sale, under the authority and direction of the British Government, of certain large bodies of land in New Zealand, the rightful property of said Webster.

The several tracts of land claimed by the petitioner are designated by red lines drawn on the chart found in Appendix No. 1, which accompanies this report, and are estimated as containing 500,000 acres.

William Webster claims these several tracts of land under regular deeds of conveyance to him, made by several New Zealand chiefs exercising full sovereign powers over their respective tribes at the time and long prior to the dates of the conveyances.

The execution of these deeds has been proven before a commission, appointed by the British Crown, which sat at Auckland. The boundaries of Webster's

lands are marked upon the chart found in Appendix No. 1 to this report, and each tract is numbered and lettered.

Mr. Webster produced his deeds before said commission and the chiefs who executed the same, and they established, as did other witnesses, the execution of the deeds to the lands claimed by him and that he paid the chiefs and tribes a consideration for the purchase amounting, in the aggregate, to more than \$70,000.

Some of these deeds have been lost, without the fault of Mr. Webster, and others, possibly all of them, are of record in some form among the archives of the commission. Neither the government of Great Britain or New Zealand has ever disputed the execution of these deeds, or their consideration, or that they were made by tribal chiefs who had full sovereignty at the time, within the limits of their respective territorial dominions.

So the committee assume, with confidence, that there was no flaw in the title of Mr. Webster to the lands described in these conveyances, and that these chiefs could make valid conveyances of them, whether by deed to private owners, or by treaty to the British Government, or to any other power.

All the conveyances to Webster are of older date by several years than any claim of Great Britain to the ownership of any lands in New Zealand, or to sovereignty and dominion over that country. They were made before Great Britain attempted to colonize that country with her subjects, or to assert any ownership of lands in those islands, either by treaty or by force. The islands of New Zealand at the time these deeds were made to Webster, and at the time that Great Britain by treaty acquired the sovereignty of the country (on the 6th February, 1840), were under the sovereignty, dominion, and government of a number of the tribes of New Zealand, each of them having territorial boundaries distinctly ascertained and guarded carefully against intrusion by other tribes. They were a warlike people, and were frequently embroiled in conflicts about their respective tribal boundaries, in respect of which they were very jealous of each other.

When Great Britain determined to acquire dominion over New Zealand by treaty, and to acquire that possession by agreement, and not by force, she could find no sovereign there with whom to treat respecting the entire country, but made her treaty with the chiefs of each tribe.

Great Britain, in gaining the sovereignty of the country and a qualified ownership in the lands, did precisely what Webster had done long before in getting a title to his lands, and that was to go to each chief of each tribe and negotiate with him as a sovereign ruler within the limits of his own territory. The same chiefs that had conveyed these lands to Webster, for a valuable consideration, afterwards conveyed to Great Britain a partial interest in their public lands and political dominion over them, as sovereign, in consideration of the blessings that they would receive in becoming British subjects, as is stated in the third article of the treaty of February 6, 1840.

That treaty is copied on pages 6 and 7 of Appendix No. 1. It is the sole basis of any right of dominion, or property, that the British Government has ever acquired in those islands. Whatever may have been the previous designs of that Government as to the acquisition of New Zealand by conquest, the treaty of February 6, 1840, placed the chiefs of the tribes, respectively, on the footing of sovereign rulers and recognized their full right to treat as such with Great Britain or any other power. Proceeding in this way to gain dominion over New Zealand, Great Britain avoided all questions of prior occupancy by citizens of other countries, and committed itself to the duty of treating them with justice.

In 1839 Great Britain empowered Capt. Hobson "to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions." The New Zealanders were reconciled to British sovereignty only when that Government, in the treaty, confirmed and guaranteed "to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession." The only qualifications of this otherwise unlimited right of ownership in chiefs, tribes, and private owners is, that when any of them shall desire to dispose of or alienate their possessions, the chiefs yield "to her Majesty the exclusive right of preëmption over such lands" at prices to be fixed by agreement.

It would be difficult to select language that would more clearly import a perfect ownership in all the soil of New Zealand, in the chiefs, the people as tribes, and as private owners, than that which is guaranteed in the treaty itself. Such a title, afterwards acquired by any person in Great Britain, in

lands to which he had no title at the time he had previously attempted to convey the land to another, would, by relation and estoppel, accrue to such grantee the moment that he got such a deed, or a treaty had granted the title to him. These chiefs had conveyed these lands to Mr. Webster before the date of the treaty. As no exception is made in the treaty of the rights of the persons to whom these prior conveyances had been made, their titles are necessarily confirmed by its terms, unless they were obtained by fraud. So that Mr. Webster, if he had no other claim to the land, would be entitled, under the laws of England, to the benefit of the express grant in this treaty, made to the chiefs from whom he had purchased and who had previously conveyed the land to him.

But his titles were of equal dignity with that afterwards acquired by Great Britain, as it relates to the sovereign power from which they are derived. They are of equal validity and force with the title of Great Britain, as it relates to the fact of the prior ownership of the lands by the chiefs and tribes. They are of equal integrity, as it relates to the consideration paid for these lands, and of as much greater moral value, as a voluntary contract stands above one made under coercion, in the estimation of all civilized people.

Mr. Webster's title came first, in point of time, from the same sovereign power that Great Britain expressly recognizes in this treaty, and it was purchased for value, from people whom he had been at great expense and labor to benefit, and who, even in their savage state, appreciated and were grateful for his kindness.

This treaty was preceded by British royal proclamations, prepared and issued just before the treaty was signed. It was under these proclamations that the rights of William Webster and other American citizens in New Zealand were afterwards stricken down.

These proclamations are copied in Appendix No. 1.

The jurisdiction asserted in the first of these proclamations is confined to "the establishment of a settled form of civil government over those of Her Majesty's subjects who are already settled in New Zealand, or who may hereafter resort thereto," and the boundaries of this colony are fixed, in the other proclamation. "to comprehend any part of New Zealand that is or may be acquired in sovereignty by Her Majesty." If it is conceded that this is an act of sovereignty over all the islands, its date is July 13, 1839, which is long subsequent to the dates of the deeds to Webster.

The treaty, which followed in February, 1840, ceded "to Her Majesty, the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said confederation of independent chiefs respectively exercise or possess over their respective territories as the sole sovereigns thereof." This admission of the sovereignty of the chiefs, on the 6th of February, 1840, ill accords with the right of Great Britain, before that date, to dispose of all the lands in New Zealand, as if they belonged to the Crown, as is done in the second proclamation issued by Captain Hobson, of date the 30th January, 1840.

The disposition of Webster's lands by the British Government was made under the powers given to the commission appointed by the Crown in the proclamations recited.

The Government of Great Britain assumed the ownership of all lands in New Zealand, and made rules for their disposal on January 30, 1840, and declared then that "no titles would be recognized that were not derived from or confirmed by Her Majesty." Afterwards, on the 6th of February, 1840, they confirmed by treaty to the chiefs, tribes, and individuals all the lands possessed by them, with all their forests and fisheries.

This reservation, or confirmation, practically covered the whole of New Zealand, for the tribes then claimed to possess as owners all the lands that they had not previously conveyed to other persons, including Webster, and as sovereigns their possession was distinctly affirmed.

Notwithstanding this treaty abrogation of the pretension of universal title in the British Crown to all the lands in New Zealand, which was declared in said proclamations, that pretension has been constantly adhered to and enforced, as against American citizens, through the decree of said commission, and according to the requirements of said proclamations. At this point the question arises, whether the lands acquired before June 15, 1839, by American citizens in New Zealand, from powers admitted by Great Britain to be sovereign, inured to the Crown of Great Britain, either in virtue of the proclamations of January 30, 1840, or the treaty of February 6, 1840. The statement of the question precludes the possibility of an affirmative answer, either as a matter of law or as a question of conscience.

But on this, the turning point in Webster's land claims, the Government of Great Britain has given its answer promptly and candidly in the negative. In an official letter of Lord Aberdeen, the British foreign secretary, to Mr. Everett, minister to England, dated February 10, 1844, he says:

[Extract.]

*Lord Aberdeen to Mr. Everett.*

The undersigned, Her Majesty's principal secretary of state for foreign affairs, had the honor in his note of the 3d ultimo to inform Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, that he had referred to Her Majesty's principal secretary of state for the colonies Mr. Everett's note of the 26th of December last relative to the complaints brought forward by several American citizens concerning the position in which they are placed in Her Majesty's colony of New Zealand, with respect to the recognition of certain of their titles to lands in that colony \* \* \* (got) before the assertion of Her Majesty's sovereignty of those islands.

Having now received an answer from the colonial department, the undersigned has the honor to inform Mr. Everett, with reference to the first head of complaint, that in consequence of certain questions raised by the American consul at Sydney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged; but that where a doubt arose whether the alien made a bona fide purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly.

To this arrangement Her Majesty's Government have since announced their determination to adhere, on the occasion of a reference being made by the governor of New Zealand on an application from a Belgian settler relative to the claims of the subjects of foreign powers to land. \* \* \* Trusting that these explanations will be satisfactory, the undersigned requests Mr. Everett to accept the assurances of his distinguished consideration.

ABERDEEN.

If the British Government maintain "their determination to adhere" to this arrangement, the only open question in Webster's claim is, whether his purchases were made in good faith. The fact of his purchase, the execution of the deeds, the subsequent affirmations of the chiefs made before the commission that they conveyed the lands in good faith and for a valuable consideration, are matters that have either been undisputed or are settled in his favor, as will be presently shown. But, it is worth while to consider, before proceeding further, whether the British Crown has any title, under the terms of the treaty of February 6, 1840, to any lands previously conveyed by the chiefs to Webster, even if such conveyances were void, or may be avoided, for fraud. The Government, without having passed upon the question mentioned in the instructions of the foreign office to the governor of New Zealand in February, 1844, and without having settled any question connected with Webster's legal or equitable rights, has sold or disposed of all his lands as crown lands. He has had no day in court, and his lands have been confiscated without a hearing and without notice.

If the conveyances to Webster were not bona fide, his possession of the land was the continuing possession of the defrauded chiefs, and their possession under the terms of the treaty reduced the interest of the Crown in these lands to a mere right of preëmption at a price to be agreed upon. Such a privilege of preëmption gave the Crown no title to these lands until it had purchased them, and its seizure and sale of them was a wrong to the chiefs if Webster had defrauded them, or to Webster if he had honestly acquired the lands.

But the sale of these lands by the Government was, virtually, a final denial of all title in Webster, and closed all courts and tribunals to his legal or equitable demands. Here is a wrong done to an American citizen by the Government of Great Britain, by means of which its treasury has been replenished, and its courts are effectually closed against all redress. The question has, therefore, ceased to be one between a citizen of the United States and any citizen of New Zealand found in possession of the lands, which could be settled either in the colonial or the British courts. It is a question to which the Government of Great Britain has made itself a party, by claiming the lands of an American citi-

zen, and by seizing them and selling them contrary to its own treaty and laws. This was also done contrary to its solemn pledge, given to the United States by Lord Aberdeen, that "where aliens had acquired lands from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged," unless they were not obtained in good faith.

This situation is one that seems to demand the intervention of the Government of the United States. That Webster's claims have been refused consideration upon the state of facts that attended their origin, and should have controlled their decision, is entirely apparent according to the record evidence in this case. Webster's claims seem to have received no other consideration than that indicated in a letter to him from the governor of New Zealand, which is as follows:

*Hamilton to Webster.*

GOVERNMENT HOUSE, *March 10, 1845.*

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims, marked 305 H and 305 I, and is sorry to find himself precluded from authorizing any further grant made to you at present on account of the largeness of the grants already made in your name.

The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

I have the honor to be, sir, your obedient servant,

J. W. HAMILTON,  
*Private Secretary.*

It is very clear that, while this enunciation of the governor of New Zealand was intended as an indefinite postponement of all further consideration of Webster's claims, it held out to him the hope that some future indulgence might be accorded to him, as an act of grace, in respect of "the lands which you now hold in undisputed possession." Neither the New Zealand natives, nor any other person, claimed to hold possession of these lands when the treaty of February 6, 1840, was made, or before that time, under any claim or color of title, or of occupancy, that was adverse to the possession of William Webster.

The governor of New Zealand, in the communication above copied, stated his decision that "claims marked '305 H' and '305 I'" were disallowed, for the present, and, also, all other grants made to Mr. Webster, "on account of the largeness of the grants already made in your (Webster's) name." This refusal to confirm "grants made to" Webster was not attempted to be justified on the ground that "land claims marked, '305 H' and '305 I'" were not in the "undisputed possession" of Webster, but solely on the ground of "the largeness of the grants already made in your (Webster's) name."

Then follows the promise, that has not been kept in any sense, that "the land which you now hold in undisputed possession will probably be granted to you eventually."

This was the manner in which the governor of New Zealand complied with the instructions of the British Government, as they are stated in the letter above quoted of Lord Aberdeen to Mr. Everett. The disposal thus made of the rights of an American citizen was a mockery of justice and a contemptuous disobedience of the instructions of the Government of Great Britain. That Government, however, at a later date, made itself responsible for this summary and unjust disposition of the rights of Mr. Webster, as will appear from a copy of correspondence annexed to this report, marked "Appendix No. 2."

On the 17th November, 1874, Earl Carnarvon, Her Majesty's principal secretary of state for the colonies, cut down all hope of Mr. Webster's success in getting his rights growing out of the assurance made to him by the governor of New Zealand on the 18th March, 1845, that the lands of which he held undisputed possession would be granted to him eventually.

Earl Carnarvon, replying to a letter of Mr. C. L. Duncan, through his secretary, said:

"Lord Carnarvon desires me to inform you that, this matter having been most carefully inquired into, the only conclusion which his lordship can come to is that not only has Mr. Webster no claim to compensation, but that he has been treated throughout with exceptional liberality."

As Mr. Webster never got an acre of land in New Zealand from all the extensive purchases he made from the chiefs, and as the British Government seized and sold all the lands conveyed to him by the chiefs for his own use and benefit,

in which British subjects were not interested, it becomes impossible to find any ground for the statement of Lord Carnarvon that he "not only had no claim to compensation, but that he had been treated with exceptional liberality." There is no other possible ground for this statement except the statement made by the governor of New Zealand in his letter to Mr. Webster, dated March 10, 1845, as to "the largeness of the grants already made in your (Webster's) name."

The facts which explain this statement are as follows: While Mr. Webster was engaged in purchasing lands from the chiefs, some of his friends in Australia, who were British subjects, employed him to purchase several tracts of land, in all about 15,000 acres, for them. They furnished the means, and he took the titles in his own name, being on terms of peculiar friendship with the chiefs, and afterwards admitted the rights of those British subjects in the presence of the commission, who proceeded to confirm the titles to them.

These facts were all made known to the commission by Webster when he appeared before them and proved his deeds by the chiefs and others. All the titles made by the chiefs to Webster, and by Webster admitted to be for the benefit of British subjects, were confirmed by the commission. The conveyances made by the chiefs to Webster, in the same deeds and for his own use, have been refused confirmation "on account of the largeness of the grants already made *in your name.*"

Thus, his faithful dealing with British subjects was made the pretext for the final denial of his rights: and titles that came through him from the chiefs for the benefit of British subjects were confirmed, while titles that came to him from the same chiefs, included in the same bodies of land and under the same conveyances, have been ignored; and his part of said lands has been seized and sold by the British Government. This is the present situation of the claim of William Webster to compensation from the British Government for his lands in New Zealand, taken and sold by its authority.

Aside from the influence of the principles of international law, which would secure rights of property to private persons in any country, the sovereignty of which passed to a new rule by cession and treaty—by purchase and not by conquest—the terms of the treaty with the tribal chiefs compel the conclusion that no title to the soil of New Zealand passed to Great Britain where the same sovereign power had formerly granted the same land to a citizen of the United States.

But the principles recognized, recently, in the Berlin Conference, as to the Free State of the Congo, and in other instances, are only consistent with the right of the chiefs of any tribe, however savage, to cede lands to private persons and societies. The sovereignty of a tribe being admitted, all questions as to their right to convey their lands disappears. This is conspicuously true as to the New Zealand chiefs, whose rights are expressly admitted in the treaty of cession and merge into the British colonial system, and upon which treaty every land title in the colony is distinctly based whether accruing to the Crown or to British subjects.

No complaint has been made by the British Government that Mr. Webster has omitted anything required to properly secure his titles to these lands, or that he has ever done anything to forfeit them. He insists that his rights have been overslaughed because of his repeated refusals to renounce his allegiance to the United States and to become a British subject. However true this may be, it is true that lands conveyed to him by the New Zealand chiefs have been confirmed by the authorities to British subjects, for whom he purchased them, and thus it is a reasonable conclusion that his foreign citizenship has caused discrimination against his rights that is neither just nor defensible.

Mr. Webster deserved, at the hands of Great Britain and all other civilized people, better treatment. When he was quite a young man he went to New Zealand with a capital of \$6,000, invested in goods suited to trade with that people. He purchased the right to set up a trading station at Coromandel from the native chiefs. He was the first white man who settled there, or at any point nearer to that place than the Bay of Islands, 150 miles from Coromandel. Pursuing his policy of friendly intercourse with the natives, and learning to speak their language fluently, he soon largely increased his capital by exchanging pork, which he bought from the natives, and ship-timber and other native productions for such articles as they needed, which he imported to that country.

He bought a cape of land from the native chiefs on or near the present site of Auckland, and built houses and established a trading station there. He was the first white man who settled there, or within a great distance from that point. As his business increased, he purchased other locations and established other

trading stations. He established a ship-yard at which he built small coasting vessels, in which he entered the shallow bays along the coasts, and ascended the rivers to open trade with the natives. In this way he was largely instrumental in bringing the natives into friendly relations with each other, and in diverting their attention from savage warfare to peaceful pursuits. He was the real pioneer of civilization in that section of the country, and was followed by colonies of English people, to whom he had opened the way to the interior of the islands. At Great Barren Island there was then a whaling station much resorted to by fishermen, and Mr. Webster sought to convey it to the United States as a valuable acquisition. His letter containing this offer is set forth in Appendix No. 1. His lands and other property in New Zealand were worth a sum which he estimates at a million dollars at the date of the treaty with Great Britain. When, later, he had been deprived of his property and returned to the United States to assert his rights, he was reduced to poverty.

In a letter, dated November 4, 1840, by Mr. Webster to F. H. Williams, United States consul at Sydney, New South Wales, and set forth in Appendix 1, he called attention to the proceedings of the British Government in reference to the lands purchased by American citizens, and asked the consul "to make it known to the American Government as early as possible." In the conclusion of his letter he says:

"They have not taken any of my lands as yet, but I expect they will take all from me, and every other American, unless our Government will take it in hand to stop it."

This was the only suggestion Mr. Webster made that he desired any intervention by the United States until September, 1858.

His letter had no relation to any indemnity for loss and damage for lands that had been, or were expected to be, sequestered by the British Government. It only had reference to getting titles to his lands, and those of other American citizens, which he feared that the British authorities might refuse to recognize and confirm.

On the 30th January, 1841, Mr. Webster wrote to the colonial secretary of New Zealand and sent him copies of his land titles to seven tracts, and seven statements of his purchases, which he asked should be laid "before the commissioners for examination only." He offered in this letter to come before the commissioners and prove all his purchases. He concludes this letter, which is copied in Appendix 1, as follows:

"All of it was bought before Her Majesty's Government was formed here, and I further consider that all I have has been dearly earned; and I trust that before I am dispossessed of any of it it will be proved who has the best right to it."

The letter of Mr. Webster to Mr. Williams was sent by the latter to our Department of State. On June 14, 1858, the Senate, by resolution, called on the President for information as to the claim of William Webster, relating to his lands in New Zealand. Replying to that resolution, the President sent to the Senate the statement, called "a report" from the Secretary of State, in the following form:

*Message of the President of the United States, communicating, in answer to a resolution of the Senate requesting a list of claims of citizens of the United States against foreign Governments, a report of the Secretary of State.*

*To the Senate of the United States:*

In compliance with the resolution of the Senate of the 14th June last, requesting a list of claims of citizens of the United States on foreign Governments, I transmit a report from the Secretary of State, with the documents which accompanied it.

JAMES BUCHANAN.

WASHINGTON, January 19, 1859.

\* \* \* \* \*

*Claim of William Webster.*

[Claims on Great Britain.]

Names of such complainants, citizens of United States, as have preferred complaints or claims against foreign Governments to the executive departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action and the amount of satisfaction obtained, if any.
William Webster ...	\$78, 145	For loss and damage (January, 1840) for so much paid, laid out, and expended, in cash and merchandise, between the years 1835 and 1840, in purchases of lands and franchises from certain chiefs of New Zealand and in the improvement thereof, prior to January, 1840, when the sovereignty of Great Britain over the islands was declared; and so the claimant alleges, his rights and privileges were sequestered by the British authorities. This statement of claim was received October, 1841, and, by instructions, was pressed upon the British Government by the envoy of the United States, 1842 and 1843. It was not presented by the claimant to the London commission acting under the convention of February 8, 1853.	The Government of Great Britain, in reply to the representations of the envoy of the United States, stated that the colonial government of New Zealand was <i>ordered</i> in March, 1841, to recognize and confirm <i>all bona fide</i> purchases made from the New Zealanders by <i>aliens</i> prior to January, 1840, and, in case of want of proof of the good faith of the transactions, such <i>aliens</i> should be dealt with in like manner as British subjects making like claim; which orders and proceedings were recognized and adhered to by the British Government in 1844 in the case of a Belgian claimant. The before-mentioned order of 1841 confirmed to <i>aliens bona fide</i> purchases made by them prior to 1840, although made at prices less than <i>five shillings</i> sterling per acre, whilst British subjects were required to show payments at that rate in order to be entitled to confirmation of grants of land obtained by from the natives prior to the proclamation of British sovereignty.
William Webster, by his counsel, Messrs. Anderson, Reverdy Johnson, and J. W. Denver.	6, 573, 750	For loss and damage and indemnity for lands purchased from chiefs of New Zealand from 1835 to 1840, and franchises pertaining thereto, and improvements alleged to have been made thereon, which claimant alleges were sequestered and taken from him by the British authorities after the assertion of the sovereignty of Great Britain over New Zealand in January, 1840. The intervention of the Executive of the United States was applied for September, 1853. The archives of the Government record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States, and to have been met by the measures of relief on the part of the British Gov-	

*Claim of William Webster—Continued.*

Names of such complainants, citizens of United States, as have preferred complaints or claims against foreign Governments to the executive departments of the Government for aggressions or spoliations, or other demands against such governments.	Amount claimed.	A brief abstract of the nature of the claim and the action of the Executive in relation thereto.	The result of such action and the amount of satisfaction obtained, if any.
William Webster—Continued.	\$6,573,750	ernment, noted in the statement here above next preceding. But the claimant now maintains that the order of the metropolitan government of 1841 was only partially obeyed by the colonial authority, and that the relief, apparently conceded by such partial obedience, has been made a nullity by the judgment of the colonial court; that no order of the British ministry can be of avail to contravene the fundamental law of Great Britain; that an alien can not take in fee and convey real estate in land by title good in law. Held under consideration.	

In a letter of Mr. Blaine, Secretary of State, to Mr. Webster, dated "Department of State, Washington, June 21, 1881," he says:

"I may state generally, however, that upon a very thorough examination of the case recently made by an officer of the Department, charged with such duties, it is found that no claim was directly presented by you, or on your behalf, for indemnity until September, 1858."

The entire letter is copied in Appendix 3 to this report.

These two statements are directly in opposition to each other. Without attempting to account for the apparent discrepancy it is clear that the statement last made is true, because, in the nature of things, the statement made in 1859 could not be true. Mr. Everett did not present or urge any claim of Mr. Webster for indemnity for lands taken from him, nor did Lord Aberdeen make allusion to any claim for compensation. The question whether the lands would be taken from Webster was still open in December, 1843; and under the orders as announced to Mr. Everett by Lord Aberdeen, in February, 1843, the obstruction to a confirmation of Webster's title, of which Mr. Everett complained, had been removed, as to the price of five shillings per acre, as far back as March, 1841.

It is not true, as matter of fact, that Webster, in 1841, had presented any claim for indemnity against the British Government, nor is it true that the "archives of this (the United States Government) record this claim to have been presented in different guise in 1841, and to have then received the prompt action of the United States." This statement is not supported, but is refuted, by the "archives of the Government."

The injustice done Mr. Webster by this untrue representation of his conduct, whoever may have inflicted it, should be now removed. He should have a fair opportunity to have his claim against Great Britain considered on its merits, without the embarrassment of a false assertion that he had abandoned his right to these lands, and had claimed compensation for them in money, before the British authorities had proceeded to finally deny or to ignore his rights. By that report the Senate was misled as to the conduct and the rights of Mr. Webster, and it is due to him that this should appear on its records, and that this embarrassment should be removed.

Your committee are of opinion that Mr. Webster's right to claim indemnity for the lands, purchased in good faith from the native chiefs, is clearly established as being just and complete, and their final sequestration and sale by the British Government, which occurred in 1845 or later, gives him the right to ask

the intervention of his Government. The British Government has not presented in its correspondence on this subject, or in any order concerning it, that has been communicated to William Webster or his counsel, or to the United States, any finding of the commission or other official authority of any fact tending to show that the conveyances made to him by the native chiefs were not made in good faith and for a valuable consideration before the treaty of February 6, 1840.

That Government, so far as your committee are informed, has never impeached the claim of Mr. Webster on any ground that takes it out of the influence of the express declaration of Lord Aberdeen to Mr. Everett, "that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged." Nor has any fact been stated by that Government which tends to include the claim of Mr. Webster in the category "that where a doubt arose whether the alien made a *bona fide* purchase of the land the settler should be treated as any British subject and his claim disposed of accordingly."

British subjects now hold lands under the same conveyances made to him, confirmed by the commission, as to such subjects, which have been treated as if they had no existence when invoked in support of Mr. Webster's rights.

For the further information of the Senate on this subject, your committee submit the papers found in appendices to this report, numbered 1, 2, 3, and 4.

These papers give the reports of committees of Congress, the correspondence with and arguments of counsel submitted to the Home Government in Great Britain, the opinion of the law officer of the Department of State, and the affidavit of Mr. Ranulph Dacre, all of which give strong support to the rights claimed by Mr. Webster.

Your committee recommend the adoption of the following resolutions:

*Resolved by the Senate,* That after due examination of the matters presented in the petition of William Webster, and the evidence brought to their attention in support of his claim for indemnity from the British Government for lands in New Zealand, purchased by him in good faith from native chiefs, and duly conveyed to him before the Government of Great Britain acquired the sovereignty over that country by a treaty made with said chiefs, the Senate of the United States consider that said claim for indemnity is founded in justice and deserves the cognizance and support of the Government of the United States. And that said claim, as a claim for money indemnity, was not presented by the United States to Great Britain prior to September, 1858.

*Resolved,* That the President is requested to take such measures as, in his opinion, may be proper to secure to William Webster a just settlement and final adjustment of his claim against Great Britain, growing out of the loss of the lands and other property in New Zealand of which he has been deprived by the act or consent of the British Government: and to which he had acquired a title under purchases and deeds of conveyance from the native chiefs, prior to February 6, 1840, and prior to any right of Great Britain to said islands.

## APPENDIX NO. 1.

[House Report No. 1543, Forty-eighth Congress, first session.]

The Committee on Foreign Affairs, to whom was referred the petition of William Webster, a native-born citizen of the United States, who prays the action of this House to aid him in furtherance of his claim against the British Government, having had the claim under consideration, submit the following report:

The petition of Mr. Webster avers in substance the following facts:

1. That he is a native-born citizen of the United States.
2. That between 1835 and 1840 he resided in the island of New Zealand, and acquired there, by grants from native chiefs, several tracts of land, described by metes and bounds, for which he paid large sums of money in cash and merchandise, the aggregate acreage of the purchase being about 500,000 acres.
3. That after the British acquisition of the sovereignty over New Zealand, in 1840, he was deprived of a large part of this land and of valuable cut and marketable timber on some of the tracts, and that these acts were done by British officers by authority of the Crown.
4. That negotiations for redress of his rights and restoration of his property, carried on through a series of years, have resulted in nothing.

5. That he desires the aid of this House in the prosecution and adjustment of his claims against Great Britain.

Your committee append to this report the petition of Mr. Webster and the accompanying documents, which appear to substantiate his allegations, and leave for the consideration of the committee only two questions:

1st. Whether the claim is a legitimate subject for diplomatic presentation, so as to warrant the House in requesting the President to present it.

2d. Whether it has been barred by the provisions of either of the claims conventions with Great Britain.

As to the first point, it appears thus far uncontradicted that Mr. Webster, at the time of the happening of the events complained of, was, and still is, a citizen of the United States. He is, therefore, a person entitled to the diplomatic protection of his Government. It also appears, in like manner, that he has been deprived of his property in a foreign country by the authorized acts of the agents of the Government of that country, and has received no compensation for it and no redress. The subject of the reclamation is therefore one entitled to diplomatic protection.

As to the second point, both the person injured and the wrong done being proper subjects for diplomatic representation, two claims conventions with barring provisions have been concluded with Great Britain since 1840.

The treaty of 1853 provided that all claims on the part of citizens of the United States which might have been presented to the Government of the United States for its interposition with the Government of Great Britain since the signature of the treaty of December 24, 1814, and which then remained unsettled, as well as any other such claims which might be presented within a fixed time, should be referred to a claims commission, and that every such claim whether presented to the commission or not, should, after the conclusion of the commission, be barred.

When this commission met and when it adjourned Mr. Webster's claims had not reached a stage to bring them within the operation of the barring clause of the agreement of 1853. His claim for the taking of his personal property had never been presented to his own Government, but had been referred by the local government of New Zealand to its superior in London, and was under advisement there, and it would be inequitable to hold that Great Britain could by negotiating in London for its settlement keep it out of the commission, and then set up the bar of the claims convention as an answer to the negotiations.

His claim for the taking of his real estate did not arise until it was definitely settled that the tracts would not be restored to him. As late as 1858 the validity of one of the grants was recognized, and from the facts as they are presented to the committee it can not be presumed that the determination not to restore them was reached until after that time. Until that decision was reached Mr. Webster was still hoping for the return of his lands, and had no claim for compensation in money for their value. Certainly up to that time no such claim had been advanced so far as shown by the accompanying papers.

The other claims convention with Great Britain existed under the treaty of May, 1871, and had jurisdiction only of claims against Great Britain on the part of citizens of the United States arising out of acts committed between April 13, 1861, and April 9, 1865. This clearly did not include Mr. Webster's wrongs.

Your committee, for these reasons, are of opinion that Mr. Webster's petition and the accompanying documentary proof show a clear case in which a citizen of the United States has suffered serious injuries from a foreign Government, which are proper subjects for diplomatic application for redress. In view of the magnitude of the injury and the great delay in redressing it, they also think it a proper occasion for action of this House upon the subject, in order to strengthen the hands of the Executive in asking for an examination into the case, and for such measure of compensation as may be found proper. They therefore recommend the adoption of the following resolution:

*Resolved*, That the petition of William Webster and the accompanying documents be transmitted to the President, with the request on the part of this House that he will take such steps as he may deem proper to secure a speedy inquiry into the injuries which Mr. Webster claims to have suffered by reason of acts of officers of the Government of Her Britannic Majesty, and the payment of a just compensation therefor.

*Petition of William Webster, a native-born citizen of the United States, who seeks the aid of the Government of the United States in furtherance of his claims against the Government of Great Britain.*

*To the honorable the House of Representatives of the United States:*

The petition of William Webster, a native and citizen of the United States, born in the State of Maine, respectfully shows:

That as such native-born citizen, in the year 1835, he went to the island of New Zealand to engage in shipbuilding and mercantile business. He engaged there in trade with the natives, acquiring their confidence, and realized from his ventures large sums of money, and up to the year 1840 he had invested in cash and merchandise gained in this way to the amount of about \$78,145 in several tracts of land in New Zealand, purchased at different times, and acquired through different deeds, from different chiefs of native tribes, to an aggregate amount of about 500,000 acres, his title papers to which will be hereinafter more specifically referred to.

At that time (1840) Great Britain acquired the sovereignty over New Zealand. A proclamation, dated January 30, 1840, was issued, extending the boundaries of the government of New South Wales so as to embrace New Zealand. On the same day another proclamation was issued, announcing that it was not deemed expedient to recognize titles to land not derived from or confirmed by Her Majesty; but that in order to dispel any apprehension that it was intended to dispossess owners of land acquired on equitable conditions, it was announced that a commission would be appointed to inquire into and report on all claims to such lands, and that all persons having such claims would be required to prove them before the commission. (Copies of these two proclamations are annexed as Inclosure No. 1 and Inclosure No. 2.)

On February 6, 1840, the treaty of Waitangi was executed. (A copy is here annexed as Inclosure No. 2½.)

A few months after these proclamations and the so-called treaty, your petitioner wrote to the consul of the United States at Sydney, in New South Wales, acquainting him with the change of sovereignty, stating that he and other American owners of land feared that their rights would be disturbed, and asking advice as to the best mode of protection. (A copy of this letter is annexed as Inclosure No. 3.)

On the 20th of July, 1841, your petitioner addressed a letter to the colonial secretary at Auckland, of which a copy is annexed as Inclosure No. 4. In this letter, as will appear, he transmitted copies of some of his title deeds and purchases for examination.

In October, 1841, a proclamation was issued declaring that all lands purchased from the natives in the islands of New Zealand had become vested in the British Crown. (A copy of this proclamation is annexed as Inclosure No. 5.)

This proclamation forbade any one from cutting the kauri pine, which it was announced had been reserved for the British navy. The principal value of much of your petitioner's land was in this pine. On some of the lands he had at that time many trees of great value, and was preparing them for market in the shape of spars and masts. The British authorities afterwards, and as late as 1845, took of this property a large portion, which had been prepared for market, and converted it to their use. Your petitioner demanded compensation, but has never received any.

On August 14, 1839, and five months before the proclamation of Captain Hobson, the Marquis of Normanby addressed a letter to Captain Hobson, by which it will appear that, notwithstanding New Zealand was acknowledged "as a sovereign, independent state," it was the purpose of the Crown to seize and hold it without regard to the rights of Americans or others to lands acquired by them anterior thereto. (Copy of this letter herewith filed is Inclosure No. 5½.)

On the 23d of February, 1841, the consul at New South Wales forwarded your petitioner's letter and map to Washington in a dispatch, a copy of which is annexed as Inclosure No. 6. The Secretary of State looked into the subject, and on the 26th of December, 1843, and after a lapse of two years, Mr. Everett, then minister of the United States in London, officially called Lord Aberdeen's attention to the violation of the rights of property of American citizens in New Zealand, and asked that the interference might cease. (Copy annexed as Inclosure No. 7.)

On the 10th of February, 1844, Lord Aberdeen replied that the governor of New Zealand had been directed to bear in mind the principle that "where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sov-

ereignty there, and that fact was undisputed, the claims should be acknowledged; but that where a doubt arose whether the alien made a *bona fide* purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly." (An extract of which is annexed as Inclosure No. 8.)

After this correspondence the local government in New Zealand took up your petitioner's grants and his claim for compensation for the spars and masts and other personal property converted to the use of the British Government. The latter was referred to the home Government for its decision, as shown by a letter dated March 13, 1845, of which a copy is annexed as Inclosure No. 9.

The former was met by a quasi recognition of a portion of the grants, and declining "at present" to authorize a recognition of the remainder. There was no definite refusal; nor was it alleged that your petitioner came within that class referred to by Lord Aberdeen as those whose good faith was in doubt. The delay was placed only on the ground of the magnitude of the concessions which your petitioner had acquired. (A copy of this letter is annexed as Inclosure No. 10.)

From that time forward the rights of your petitioner and the conflicting claims of the British Government remained undetermined until about the year 1858. At that time a conveyance made in 1844 by your petitioner to one Ranulph Dacre of a tract of 5,000 acres was recognized as valid; but with that exception and the other small exceptions, amounting in the aggregate to about 15,000 acres, already noted, the large and valuable tracts of lands belonging to your petitioner have never been restored to him.

Your petitioner then resorted to his own Government for redress. He petitioned the Senate, and that body sought information from the Executive. A report, evidently prepared by a clerk in the Department of State who had not examined the original papers, was returned in answer to the Senate's inquiry. Your petitioner transmits herewith a copy of that report as Inclosure No. 11, and invites attention to it. Its inaccuracies caused grievous wrong to your petitioner.

It alleged that your petitioner had presented to the Department in 1841. and that the Department had pressed upon the British Government in London, a money claim for damages for sequestration of your petitioner's land. Nothing could be further from the truth. Your petitioner invoked the aid of his Government, so far as he did invoke it at that time, to secure him in the possession of his property. Nothing was further from his wishes or his expectation at that time than the abandonment of his property and accepting a return of his money in satisfaction for it. He was then young, with life before him, and had carefully, and as he thinks with good judgment, planted his fortune there. There he wished to stay until the object of his enterprise should have been accomplished. He asked his Government to protect him in the possession and enjoyment of his rights. His Government responded to his request. The British Government met the intervention by an admission of his right to all tracts of land acquired in good faith. It held him in suspense for years. To this day it has never denied that he acquired his lands in good faith. In face of all these facts your petitioner respectfully maintains that the clerk in the Department of State who made up that report had no authority for statements which interpose, in effect, a defense against his just claims for indemnity, which has not been set up by Great Britain and which has no foundation in fact.

Your petitioner did not rest under this imputation. He placed his demand in the hands of his counsel, the late Mr. Reverdy Johnson, and others, who pointed out that the demand for indemnity grew out of ultimate failure of the colonial government to give the measure of relief promised by Lord Aberdeen in his note of February 10, 1844.

The outbreak of the civil war put a peremptory stop upon the consideration of all such matters. The original title deeds and other valuable papers of your petitioner, except those left with the land commission in New Zealand, were in the possession of A. Anderson, esq., one of his counsel, who was during the war within the lines of the military occupation of the Confederacy, and when peace was restored your petitioner learned that said Anderson had died, and that his deeds and papers had disappeared and could nowhere be found.

While the convention, known as the Johnson-Clarendon convention, was being negotiated your petitioner requested the Secretary of State to secure language broad enough to take in his claim. Mr. Seward answered that this would require a modification of the instrument agreed upon, and that he thought it

would be better to make separate and independent negotiations. (A copy of this letter is annexed as Inclosure 12.)

In 1876 your petitioner again applied to Congress. In response to a resolution of your honorable body, President Grant transmitted a report to the Secretary of State, a copy of which is annexed, marked Inclosure 13 by which it will appear that at that time no correspondence had taken place between the State Department and the Government of Great Britain in relation to the sequestration of your petitioner's lands, as was erroneously stated in report from State Department, as per Inclosure No. 11.

In 1880 your petitioner again applied to Congress. The Committee on Foreign Affairs applied to the Secretary of State for information. The Secretary referred the application to the law officer of the Department, who made a report, which was sent to the committee as the Secretary's answer to its inquiry. (A copy of this report is annexed as Inclosure 14.) The committee thereupon reported with a recommendation of the passage of a joint resolution requesting the President to take steps to secure an adjustment of your petitioner's claim. (A copy of this report is annexed as Inclosure 15.)

Your petitioner here files an extract from the Official Gazette of the New Zealand government of May, 1842, which is also on file in the colonial office in London, by which the land commission of that government conceded that he had proved title to about 240,000 acres of land, but for causes unknown to him failed to confirm the same.

This extract is marked as Inclosure No. 16.

He also files herewith a duplicate plat of his land, the original of which was forwarded to the State Department by Consul Williams, as hereinbefore stated; a copy of which was also filed in colonial office, and was before the land commission.

The same is here annexed as Inclosure No. 17.

And he herewith also files the affidavit of Ranulph Dacre, containing important facts touching his title.

Annexed inclosure is No. 18.

Your petitioner has been thus particular in stating his case in order that your honorable body may have before it all facts bearing upon it, both those favorable to it and those which may be argued to bear against it, and he confidently appeals to your sense of justice that he has established—

1st. That his lands were held by him under fee-simple title, and his property wrongfully taken from him by the action of persons, sanctioned by her Britannic Majesty's Government.

2d. That he has never received any compensation for the wrongs thus inflicted.

3d. That his right to demand such compensation is not lost by negligence, or lapse of time, or the barring clause, or operation of any treaty, or in any other way.

Having established these facts, he respectfully prays the action of your honorable body to assist him in the recovery of his just rights in such way as to your honorable body shall seem best.

And, as in honor bound, will ever pray.

WILLIAM WEBSTER,  
B. WILSON,  
*Attorney for Petitioner.*

WASHINGTON CITY, D. C., *February 23, 1884.*

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#### PROCLAMATION.

By his excellency William Hobson, esq., lieutenant-governor of the British settlement in progress in New Zealand.

Whereas Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased to direct that measures shall be taken for the establishment of a settled form of civil government over those of Her Majesty's subjects who are already settled in New Zealand, or who may hereafter resort thereto: and whereas Her Majesty has been also graciously pleased to direct letters patent to be issued under the great seal of the said United Kingdom, bearing date the 15th of June, in the year 1839, by which the former





boundaries of the colony of New South Wales are so extended as to comprehend any part of New Zealand that is or may be acquired in sovereignty by Her Majesty, her heirs, or successors: and whereas Her Majesty has been further pleased, by a commission under the royal signet and sign manual, and bearing date the 13th day of July, 1839, to appoint me, William Hobson, esq., captain in Her Majesty's royal navy, to be lieutenant-governor in and over any territory which is or may be acquired in sovereignty by Her Majesty, her heirs, or successors, within that group of islands in the Pacific Ocean commonly called New Zealand, and lying between the latitude of 34 degrees 30 minutes and 47 degrees 10 minutes south latitude, and 166.5 degrees and 179 degrees east longitude from the meridian of Greenwich: Now, therefore, I, the said William Hobson, do hereby declare and proclaim that I did, on the 14th day of January instant, before his excellency Sir George Gipps, knight, captain-general and governor-in-chief in and over the territory of New South Wales and its dependencies, and the executive council thereof, take the accustomed oaths of office as lieutenant-governor, as aforesaid. And I do hereby further proclaim and declare that I have this day opened and published the two commissions as aforesaid: that is to say, the commission and the great seal, extending the boundaries of the government of New South Wales, and the commission under the royal sign manual, appointing me lieutenant-governor as aforesaid. And I do hereby further proclaim and declare that I have this day entered on the duties of my said office as lieutenant-governor aforesaid. And I do call upon all Her Majesty's subjects to be aiding and assisting me in the execution thereof.

Given under my hand and seal, at Kororarika, this 30th day of January, 1840, in the third year of Her Majesty's reign.

WILLIAM HOBSON.

By his excellency's command.

GEORGE COOPER.

God save the Queen!

#### PROCLAMATION.

By his excellency William Hobson, esq., lieutenant-governor of the British settlements in progress in New Zealand.

Whereas Her Majesty Queen Victoria, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased by indentures under the hand of the most noble the Marquis of Normanby, one of Her Majesty's principal secretaries of state, bearing date the 14th day of August, 1839, to command that it shall be notified to all Her Majesty's subjects settled in or resorting to the islands of New Zealand, that Her Majesty, taking into consideration the present as well as future interests of the said subjects, and also the interests and rights of the chiefs and native tribes of the said islands, does not deem it expedient to recognize as valid any titles to land in New Zealand which are not derived from or confirmed by Her Majesty: Now, therefore, I, William Hobson, esq., captain in Her Majesty's navy, and lieutenant-governor in and over such parts of New Zealand as have been or may be acquired in sovereignty by her said Majesty, do hereby accordingly proclaim and declare to all Her Majesty's subjects that Her Majesty does not deem it expedient to recognize *any titles* to land in New Zealand which are not derived from or confirmed by Her Majesty as aforesaid. But in order to dispel any apprehension that it is intended to dispossess the owners of land acquired *on equitable conditions, and not in extent or otherwise prejudicial* to the present or prospective interests of the community, I do hereby further proclaim and declare that Her Majesty has been pleased to direct that a commission shall be appointed with *certain* powers, to be derived from the governor and legislative council of New South Wales, to inquire into and report on all claims to such lands, *and that all persons having such claims will be required to prove the same before the said commission when appointed.* And I do further proclaim and declare that all purchases of land, in any part of New Zealand, which may be made from any of the chiefs or native tribes thereof after the date of these presents will be considered as absolutely null and void, and will not be confirmed or in any way recognized by Her Majesty.

Given under my hand and seal, at Kororarika, this 30th day of January, 1840, in the third year of Her Majesty's reign.

WILLIAM HOBSON.

By his excellency's command.

GEORGE COOPER.

God save the Queen!

## TREATY OF WAITANGI.

Her Majesty Victoria, etc., has been graciously pleased to empower me William Hobson, a captain in the royal navy, consul and lieutenant-governor over such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty, to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions:

ART. 1. The chiefs of the Confederation of the United Tribes of New Zealand, and the separate and independent chiefs who have not become members of the confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said confederation of independent chiefs respectfully exercise or possess over their respective territories as the sole sovereigns thereof.

ART. 2. Her Majesty the Queen of England confirms and guarantees to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession. But the chiefs of the United Tribes, and the individual chiefs, yield to Her Majesty the exclusive right of preëmption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ART. 3. In consideration thereof Her Majesty the Queen of England extends to the natives of New Zealand her royal protection, and imparts to them all the rights and privileges of British subjects.

W. HOBSON.

Now, therefore, we, the chiefs of the confederation of the United Tribes of New Zealand, being assembled in congress at "Waitangi," and we, the separate and independent chiefs of New Zealand, claiming authority over the tribes and territories which are specified after our respective names, having been made fully to understand the provisions of the foregoing treaty, accept and enter into the same in the full spirit and meaning thereof.

In witness whereof we have attached our signatures or marks at the places and dates respectively specified.

Done at Waitangi, this 6th day of February, in the year of our Lord 1840.

LETTER FROM WILLIAM WEBSTER TO J. H. WILLIAMS, ESQ., CONSUL FOR THE UNITED STATES AT SYDNEY, NEW SOUTH WALES.

COROMANDEL HARBOR, RIVER THAMES,  
*New Zealand, November 4, 1840.*

SIR: On my arrival in the Bay of Islands, in March, 1835, I was informed that these islands had been acknowledged by all European and American powers to be a free and independent country. Finding it a fine country and healthy climate, it induced me to proceed to the River Thames, where I have been busily employed in purchasing and improving the lands, as well as civilizing the natives. No doubt you are aware that the British Government have taken possession of some parts of these islands, and have issued proclamations and other notifications that all titles to land acquired from the native chiefs are to be sent to the colonial secretary's office at Sidney to be examined. I suppose they intend to allow whatever portion of land they may think proper. I beg to call your attention to know what all Americans in this island are to do with the large quantity of land they have purchased.

No doubt you are aware that a great part of the oil taken by American ships is caught on this coast, and I can safely say that there are ten American ships come into these ports to recruit to one ship of any other nation. I beg to acquaint you of the valuable lands I have purchased from independent chiefs of this place, and beg you will make it known to the American Government as early as possible. The land purchased by me and the amount paid for it is as follows:

*Schedule of various lands purchased.*

Paid for Barrier Island, in March, 1837, and the title deeds, signed by thirty-six independent chiefs, giving up all right and title to the same; cash and merchandise	£1, 200 0 0
Paid for part of the island of Waiheke, in 1836	558 0 0
Paid for land at Coromandel Harbor, in 1836	1, 000 0 0
Paid for Mercury Island, in 1838	944 0 0
Paid for land at Point Rodney, in 1838	490 0 0
Paid for land on banks of river Thames, 1836	250 0 0
Paid for land on banks of river Watemata, in 1837	280 0 0
Paid for Bay of Plenty, 1839	450 0 0
Paid for river Piako, 1839	1, 375 0 0
Amount expended in building and other improvements from 1835 to 1840	9, 060 0 0
	<hr/>
	15, 672 0 0

Equal to about \$78,145.

Inclosed is a sketch of the Frith of Thames, and you will see the land marked out that I have purchased. I wish to inform you that the Barrier Island is a most excellent port for whaling ships to put in to recruit; there is plenty of good wood and water and provisions, and it is an excellent harbor, as you may see by the inclosed map. If the American Government should think of having a port in this country for their ships, there cannot be a better-adapted place. The island is about 20 miles long and about 5 miles broad: it was purchased by me in March, 1837, and the title deed signed by thirty-six of the principal chiefs of this place. I have another, called the Mercury Island, which contains about 16,000 acres, which you will see marked on the map, with the many other places I have purchased. I beg you will point out to the American Government what an advantage it would be to them to take possession of the Barrier Island, where they could have a fine, safe port for their ships in case of war, and a very small expense would build a battery that would protect their ships in harbor. I will willingly give it up to the American Government for a very small sum rather than the English Government should have anything to do with it. You will see by the copy of the title of the deeds that I have expended equal to \$78,145, for which I have bought about 500,000 acres of land, and to the best of my knowledge there has been about 1,000,000 of acres purchased in these islands by citizens of the United States, and for which they have expended about £50,000 sterling, besides several years' labor, and running great risks where the natives were not civilized. They the British Government have already put me to a loss of £6,000 sterling by their acts. They have not taken any of my lands as yet, but I expect they will take all from me and every other American, unless our Government will take it in hand and stop it. I trust you will make this known to the United States Government as early as possible, so that all Americans may know how to act in this case.

I am, sir, your humble servant,

WILLIAM WEBSTER,  
*Citizen of the United States.*

J. H. WILLIAMS, Esq.,  
*United States Consul, Sydney, New South Wales.*

[Inclosure No. 4.]

*William Webster to Colonial Secretary.*

COROMANDEL HARBOR, July 20, 1841.

SIR: I have sent seven copies of titles to land, and seven statements of purchases, which I beg you will lay before the commissioners *for examination only*. I have sent all my claims to land in this country before the United States Government, by the advice of the American consul of Sydney, and I trust his excellency Governor Hobson, will not suffer any of my lands to be interfered with until the question is settled. I have been a resident in New Zealand for seven years, and have expended a large sum of money, and undergone a great deal of

trouble and hardships. I am willing to come forward and prove all of my purchases, but I trust I shall be allowed time to do it, for I am very busy now with shipping, and am under heavy penalties for the fulfillment of my agreements, and I find it will take a long time to get all the natives and witnesses to my purchases of land together, and the expense will be very great. I find myself already at a great loss, and it appears to me I am to be put to much more, and I don't know who to look to for it. I trust when my claims or purchases to lands (in this country) are examined that they will prove to be well understood by those I bought it from. All of it was bought before Her Majesty's Government was formed here; and I further consider that all I have has been dearly earned, and I trust that before I am dispossessed of any of it, it will be proved who has the best right to it. Hoping that I have not made any unjust remarks,

I have the honor to be, your most obedient servant,

WILLIAM WEBSTER.

To COLONIAL SECRETARY.

#### PROCLAMATION VESTING LANDS IN BRITISH CROWN.

COLONIAL SECRETARY'S OFFICE,

*Auckland, October 30, 1841.*

Whereas *all lands* purchased from the natives in the islands of New Zealand have become vested in and are now the property of the Crown.

And whereas by an act of the Imperial Parliament, passed in the reign of his late Majesty King George the Fourth, it is enacted "that if any person shall steal, or shall cut, break, root up, or otherwise destroy and damage, with intent to steal the whole or any part of any tree, sapling, or underwood, of a certain value, shall be guilty of *felony*, and shall be liable, on conviction, to the punishment of *transportation*."

And whereas serious depredations have been committed in the kouri forests of New Zealand.

And whereas Her Majesty has been pleased to direct that effectual means should be taken for the preservation of kouri pine for the use of the British navy:

Now, his excellency, the governor, directs it to be notified, that all persons found stealing, cutting, or destroying kouri pine, with intent to steal the same, within the colony of New Zealand, will be prosecuted with the utmost rigor of the law.

Now, it is hereby also notified, that a reward of £5 (five pounds) will be given to any person who will give such information as shall lead to the conviction of any person so offending.

By his excellency's command.

WILLOUGHBY SHORTLAND.

#### EXTRACT OF LETTER FROM THE MARQUIS OF NORMANBY TO CAPTAIN HOBSON, R. N.

DOWNING STREET, *August 14, 1839.*

SIR: Your appointment to the office of Her Majesty's consul at New Zealand having been signified to you by Viscount Palmerston, and his lordship having conveyed to you the usual instructions for your guidance in that character, it remains for me to address you upon the subject of the duties which you will be called to discharge in a separate capacity and under my own official superintendence. \* \* \* I have already stated that we acknowledge New Zealand as a sovereign and independent state.

\* \* \* \* \*

It is almost superfluous to say that in selecting you for the discharge of this duty I have been guided by a firm reliance in your uprightness and plain dealing; you will, therefore, frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them; especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable

to no laws or tribunals of their own, and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the sovereign of their country.

It is not, however, to the mere recognition of the sovereign authority of the Queen that your endeavors are to be confined, or your negotiations directed. It is further necessary that the chiefs should be induced, if possible, to contract with you as representing Her Majesty. Henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain. \* \* \* You will, therefore, immediately on your arrival, announce by a proclamation addressed to all the Queen's subjects in New Zealand that Her Majesty will not acknowledge as valid any titles to land which either has been, or shall hereafter be, acquired in that country which is not either derived from, or confirmed by, a grant to be made in Her Majesty's name and on her behalf.

Extensive acquisitions of such lands have undoubtedly already been obtained, and it is probable that before your arrival a great addition will have been made to them. The embarrassments occasioned by such claims will demand your earliest and most careful attention. The propriety of immediately subjecting to a small annual tax on all uncleared lands within the British settlements of New Zealand will also engage the immediate attention of the governor and council of New South Wales. The forfeiture of all lands in respect of which the tax shall remain for a certain period in arrear would probably before long restore to the demesne of the Crown so much of the waste lands as may be held unprofitably to themselves and to the public by the actual claimants. Having by these methods obviated the dangers of the acquisition of large tracts of country by mere land-jobbers.

I have thus attempted to touch upon all the topics on which it seems necessary to address you on your departure from this country. \* \* \* Reposing the utmost confidence in your judgment, experience, and zeal for Her Majesty's service, and aware how powerful a coadjutor and how able a guide you will have in Sir G. Gipps, I willingly leave for consultation between you many subjects on which I feel my own incompetency, at this distance from the scene of action to form an opinion.

I have, etc.

NORMANBY.

Captain HOBSON, R. N.

CONSUL WILLIAMS TO SECRETARY OF STATE.

CONSULATE OF THE UNITED STATES,  
*Sydney, New South Wales, February 23, 1841.*

SIR: I have the honor to inclose for your perusal the copy of letter addressed to me by William Webster, a citizen of the United States, residing at New Zealand, from which you will learn better than by anything I could say the magnitude of American interest at those islands. You will also find herewith the plan referred to in Mr. Webster's letter.

I have the honor to be, sir, your obedient servant,

J. H. WILLIAMS.

To the Hon. JOHN FORSYTH,  
*Secretary of State, at Washington.*

#### CORRESPONDENCE DIPLOMATIC.

[Extract.]

*Mr. Everett to Lord Aberdeen.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has been instructed by his Government to invite the attention of the Earl of Aberdeen, Her Majesty's principal secretary of state for

foreign affairs, to the complaints of several American citizens established on the islands of New Zealand, or concerned in trade in that quarter. \* \* \*

The complaints \* \* \* appear to be twofold: one, that after the assertion of the sovereignty of Her Majesty over the islands of New Zealand, \* \* \* regulations and restrictions were established injurious to the interests of citizens of the United States settled in business on these islands, prior to this date (January, 1840), and particularly in vacating all purchases of lands previously made of the native chiefs, except so far as the said lands had been paid for at the rate of five shillings per acre.

In the questions which might arise in reference to the assertion of sovereignty by Her Majesty's Government over New Zealand, the United States have not felt themselves called to take any part. They entertain no desire to make acquisitions of territory themselves in those remote regions, nor to interfere with those of other Governments. But it is at once their right and their duty to protest against any measures by which injury is inflicted on those interests of their own citizens which had grown up in the prosecution of a commerce open to all nations. Whatever rights could be acquired to England by the assertion of sovereignty over the islands of New Zealand must be, of course, qualified by any preexisting rights of other civilized nations. Although the law of nations has not, perhaps, as yet defined with exactness the extent of the rights which individuals from foreign civilized nations are capable of acquiring in uncivilized, independent countries, with the consent of their chiefs, it is well established that these rights are entitled to great consideration on the part of any civilized Government which may subsequently possess itself of the sovereignty of such countries.

It appears to the undersigned that a regulation vacating at one blow all purchases of land made by citizens of the United States from the independent chieftains of New Zealand for a less consideration than five shillings sterling per acre would be unreasonable and oppressive.

The undersigned apprehends that a cession of land made by those chieftains to a citizen of the United States resorting to these islands for the pursuit of the whale fishery, or any other lawful purpose, even without any pecuniary consideration, would be fully entitled to respect. It might be made from good will on the part of the natives, and from a desire to encourage the resort of industrious strangers. It might be made on the condition of establishing and keeping up a factory or a shop; and such considerations would be reasonable.

As a limit of purchase money, five shillings sterling per acre seems to the undersigned greatly too high, and far above any pecuniary value which the lands could possibly bear to those who sold them at the time of the purchase.

Lord Aberdeen will observe that the undersigned makes these remarks wholly in reference to American citizens lawfully resorting to the islands of New Zealand in their independent state; and inviting his lordship's attention to the subject, the undersigned is confident that if it should appear that regulations have been established by the colonial authorities, bearing with undue hardship on the equitable interests acquired by American citizens before the assertion of Her Majesty's sovereignty, proper measures of redress and remedy will be directed to be taken.

\* \* \* \* \*

The undersigned submits these statements to Lord Aberdeen with the greater confidence, from the conviction that the principles assumed by the United States on this occasion are those which have been, and in any parallel case would ever be, strenuously asserted by the Government of Her Majesty. Neither the United States nor any other power, if so disposed, would be permitted, without opposition by England, in establishing an exclusive sovereignty over previously independent islands in the Pacific Ocean, to proceed at pleasure to vacate purchases of land made by British subjects, or to interfere with other interest existing before such assertion of sovereignty was made.

In announcing the expectation that the benefit of these principles will be fully extended by Her Majesty's Government to the interests of American citizens in New Zealand, the undersigned would observe that nothing is desired by the President inconsistent with the best interests of England or her subjects. It would seem for their undoubted advantage to encourage the resort of industrious foreigners to those remote British possessions.

\* \* \* \* \*

The undersigned relies on the Earl of Aberdeen's effectual interposition, should it appear that injustice has been done to citizens of the United States in the manner complained of.

EDWARD EVERETT.

DECEMBER 26, 1843.

*Lord Aberdeen to Mr. Everett.*

The undersigned, Her Majesty's principal secretary of state for foreign affairs, has the honor to acknowledge the receipt of the note dated the 26th ultimo, from Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, relative to the complaints brought forward by several American citizens, concerning the position in which they are placed in Her Majesty's colony of New Zealand, with respect to the recognition of certain of their titles to lands in that colony.

\* \* \* \* \*

The undersigned has lost no time in referring Mr. Everett's note to Her Majesty's principal secretary of state for the colonies for his consideration, and the undersigned will again have the honor of communicating with Mr. Everett as soon as he shall receive the reply of the secretary of state for the colonies.

\* \* \* \* \*

ABERDEEN.

FOREIGN OFFICE, *January 3, 1844.*

*Lord Aberdeen to Mr. Everett.*

The undersigned, Her Majesty's principal secretary of state for foreign affairs, had the honor, in his note of the 3d ultimo, to inform Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, that he had referred to Her Majesty's principal secretary of state for the colonies Mr. Everett's note of the 26th of December last, relative to the complaints brought forward by several American citizens, concerning the position in which they are placed in Her Majesty's colony of New Zealand, with respect to the recognition of certain of their titles to lands in that colony \* \* \* [got] before the assertion of Her Majesty's sovereignty of those islands.

Having now received an answer from the colonial department, the undersigned has the honor to inform Mr. Everett, with reference to the first head of complaint, that in consequence of certain questions raised by the American consul at Sydney, as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged, but that where a doubt arose whether the alien made a bona fide purchase of the land, the settler should be treated as any British subject, and his claim disposed of accordingly.

To this arrangement Her Majesty's Government have since announced their determination to adhere, on the occasion of a reference being made by the governor of New Zealand on an application from a Belgian settler relative to the claims of the subjects of foreign powers to land.

\* \* \* Trusting that these explanations will be satisfactory, the undersigned requests Mr. Everett to accept the assurances of his distinguished consideration.

ABERDEEN.

FOREIGN OFFICE, *February 10, 1844.*

*Hamilton to Webster.*

GOVERNMENT HOUSE, AUCKLAND,  
*March 13, 1845.*

SIR: I am desired by the governor to acknowledge the receipt of your letter of the 10th instant in reference to spars taken for the use of Her Majesty's navy by Commander Wood, of Her Majesty's storeship Tortoise, from off land in the Bay of Plenty, to which at the time you laid claim. In answer to your claim for compensation, I am desired by the governor to say that he will refer the case for the decision of the home Government, being unable himself to do anything at present.

I have the honor to be, sir, your most obedient servant,

J. W. HAMILTON,  
*Private Secretary.*

MR. W. WEBSTER,  
*Auckland.*

*Hamilton to Webster.*GOVERNMENT HOUSE, *March 10, 1845.*

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims, marked 305 H and 305 I, and is sorry to find himself precluded from authorizing any further grant made to you at present on account of the largeness of the grants already made in your name. The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

I have the honor to be, sir, your most obedient servant,

J. W. HAMILTON,  
*Private Secretary.*

DEPARTMENT OF STATE,  
*Washington, January 26, 1869.*

GENTLEMEN: I have to acknowledge the receipt of your letter of the 15th, relating to claims of citizens of the United States growing out of the occupation of the islands of New Zealand by the authorities of Great Britain in 1840, and suggesting the incorporation of a clause in respect to such claims in the convention for the general adjustment of private claims between this Government and that of Great Britain. In reply I have to state that it would be inexpedient in my judgment to attempt any modification in the convention relating to claims which is now awaiting ratification. And that it will be preferable, if the provisions of that convention shall be found insufficient to admit the examination of the claims to which you refer, that they should be made the subject of separate and independent negotiation at another time.

I am, gentlemen, your obedient servant,

WM. H. SEWARD.

#### CLAIM OF WILLIAM WEBSTER IN NEW ZEALAND, ON JUNE 1.

Mr. Thompson, by unanimous consent, submitted the following resolution, which was read, considered, and agreed to:

*Resolved*, That the Secretary of State be directed, if not inconsistent with the interest of the public service, to furnish the House copies of the correspondence between the State Department and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by William Webster, an American citizen, by purchase of the native chiefs of that country before its cession to and occupation by the British Government.

#### NEW ZEALAND.

The Speaker *pro tempore* also, by unanimous consent, laid before the House the following message from the President, and accompanying report from the Secretary of State.

The Clerk read as follows:

*To the House of Representatives:*

I transmit herewith, in answer to a resolution of the House of Representatives of the 1st ultimo, a report from the Secretary of State upon the subject.

U. S. GRANT.

WASHINGTON, *July 13, 1876.*

*To the PRESIDENT:*

The Secretary of State has the honor to report that upon the 2d day of June he received a copy of a resolution of the House of Representatives in the following words:

*“Resolved*, That the Secretary of State be directed, if not inconsistent with the public service, to furnish to the House copies of the correspondence between the State Department and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by William Webster, an American citizen, by purchase of the native chiefs of that country by Webster before its cession to and occupation by the British Government.”

No correspondence has taken place between the Department of State and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by William Webster, an American citizen. In the years 1841 to 1844 certain correspondence was had between the legation in London and the foreign office of Great Britain in reference to the general question of land titles held in New Zealand by American citizens, but no correspondence has taken place in regard to the particular claim of Mr. Webster.

Respectfully submitted.

HAMILTON FISH,

DEPARTMENT OF STATE,  
Washington, July 13, 1876.

*Copy of report from the Law Bureau of the State Department at Washington to the Secretary of State, in respect to the claim of William Webster against the British Government.*

LAW BUREAU, April 16, 1880.

SUBJECT: Claim of William Webster, a citizen of the United States, against the British Government. Memorial and papers handed to the Secretary by the Hon. S. S. Cox, April, 1880.

This claim has been formally before the Department since September, 1858, when a printed memorial with accompanying papers was referred for examination by President Buchanan. Notice of the occurrences from which the claim arises was, however, brought to the attention of the Department by a letter of the 23d of February, 1841, from J. H. Williams, esq., then United States consul at Sydney, New South Wales.

Mr. Williams, in this letter, which was received October following, simply states that he transmits a copy of a letter addressed to him by Mr. William Webster for the Secretary's perusal, and then leaves Webster to tell his own story.

Webster, in the letter referred to, states that he is a citizen of the United States, a native of Maine; that he first went to New Zealand in 1835, and being pleased with the country, remained there; and that during the succeeding five years he devoted himself to purchasing and improving and cultivating land, and teaching the natives the arts of civilization; that he made his purchases of the several tracts shown on the map, which accompanied his letter, from the native chiefs, and that he expended in such purchases £15,627, or about \$78,000. The total of land amounts to about 500,000 acres. In addition to this, he alleges that he expended large sums in making improvements, building wharves, improving harbors, and erecting houses.

In 1840 the British Government acquired possession and sovereignty of the island by treaty, concluded with certain chiefs, and from that New Zealand became a British colonial possession.

Capt. William Hobson, royal navy, was appointed lieutenant-governor of the provinces, and under instructions from the Marquis of Normanby, then secretary for the colonies, immediately proceeded to put in force such regulations as were prescribed by the home Government in relation to the people, natives, and foreigners then inhabiting the island.

By a proclamation, bearing date the 30th day of January, 1840, the governor makes known the disposition of the Government with respect to land titles. It is found on pages 12 and 13 of the annexed pamphlet:

"1st. Her Majesty, taking into consideration the present as well as future interests of her subjects, and also the rights of the chiefs and native tribes, does not deem it expedient to recognize as valid any titles to land which are not derived from or confirmed by Her Majesty.

"2d. But in order to dispel any apprehensions that it is intended to dispossess the owners of lands, acquired on equitable condition, and not in extent or otherwise prejudicial to the present or prospective interests of the community, a commission is appointed with certain powers, to be derived from the governor and legislative council of New South Wales, to inquire into and report on all claims to such lands, and all persons having such claims will be required to prove the same before the said commission when appointed."

The treaty by which the British Government acquired title to New Zealand is dated the 6th of February, 1840, some days, as it is seen, after the above proclamation. Nothing is said in the proclamation about Americans, or other

non-British subjects, or what, if any, course the new Government intended to pursue in regard to these land titles.

There were many Americans besides Webster, and all of them refused to recognize the legality of the proposed commission. It was under this condition of things that Mr. Webster addressed his letter to Consul Williams, as the most certain and convenient way of bringing the facts to the notice of the Government of the United States, not as to himself alone, but as to all Americans similarly situated. He, however, formulated no claim at that time and made no demand for indemnity, for, as he states himself, he had not then been despoiled of his lands.

The British authorities took possession of the most valuable of Mr. Webster's land; he got none, although there was a *quasi* recognition of his title by the so-called land commission, in the fact that in 1858 the New Zealand government confirmed to Mr. Ranulph Dacre 5,000 acres of land, which he (Dacre) had purchased from Webster in 1844.

Beside the loss of his land, Mr. Webster claimed to have suffered large losses from interference with his business, especially shipping. He had then several vessels, both in the coasting and foreign trade. In 1858, after all efforts to get his claims to land recognized had failed, both in New Zealand and in England, he brought his claim before this Government, Reverdy Johnson, A. Anderson, and J. W. Denver being his counsel. His memorial was addressed to the President and referred to this Department. I find a memorandum, dated the 15th of September of that year, headed "Reports," but not signed by any one, which appears to be all the action taken by the Department at that time in relation to the matter. I append that paper, and will notice it further on.

The claim was again brought to the attention of the Department in May, 1869, by General Denver, and on that occasion I find a memorandum of the Secretary in Mr. Fish's own handwriting, dated May 11, which, like the report of 1858, is adverse to the claim.

In the session of 1876 a resolution passed the House of Representatives, calling upon the President for correspondence in regard to Mr. Webster's claim between the Department and the Government of Great Britain. On the 13th of July of that year this resolution was answered, and Mr. Fish, in his letter, says no correspondence has taken place between the Department of State and the Government of Great Britain in relation to the sequestration of the land and property in New Zealand claimed by William Webster, an American citizen.

In the years 1841 to 1844 certain correspondence was had between the legation in London and the foreign office of Great Britain in reference to the general question of land titles held in New Zealand by American citizens, but no correspondence has taken place in regard to the particular claim of Mr. Webster. A copy of that correspondence is inclosed, and it consists of—

1st. A letter of the 26th of December, 1843, from Mr. Everett to Lord Aberdeen.

2d. A brief reply from his lordship, of the 3d of January following, saying the subject had been referred to the secretary for the colonies.

3d. A note of the 10th of February, 1844, from Lord Aberdeen to Mr. Everett, conveying the reply of Government, the chief point of which is the following: That in consequence of certain questions, raised by the American consul at Sydney, as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle, that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claim should be acknowledged; but when a doubt arose whether the alien made a *bona fide* purchase of the land, the settler should be treated as any British subject, and his claims disposed of accordingly.

I find the following letter from Mr. Secretary Seward, January 26, 1869, which appears to have been transmitted to Congress with the above correspondence, which, as I deem it pertinent to the conclusion I have reached, I insert here:

"I have to acknowledge the receipt of your letter of the 15th, relating to claims of citizens of the United States, growing out of the occupation of the islands of New Zealand by the authorities of Great Britain in 1840, and suggesting the incorporation of a clause in respect to such claims in the convention for the general adjustment of private claims between this Government and that of Great Britain. In reply, I have to state that it would be inexpedient, in my judgment, to attempt any modification in the convention relating to claims, which is

now waiting ratification, and that it will be preferable, if the provisions of that convention shall be found insufficient to admit the examination of the claims to which you refer, that they should be made the subject of separate and independent negotiations at another time."

With reference to what proceedings were had before the British land commission sitting at Auckland, touching Webster's titles or claims, I have no means of ascertaining their nature or the mode of procedure.

The following letter, bearing date the 10th of March, 1845, from Governor Fitzroy's private secretary to Mr. Webster, and which is attached to Webster's memorial as an exhibit, will convey some idea of the result, so far as their proceedings affected Webster.

GOVERNMENT HOUSE, *March 10, 1845.*

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims marked 305 H and 305 I, and is sorry to find himself precluded from authorizing any further grant made to you at present, on account of the largeness of the grants already made in your name. The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

I have the honor to be, sir, your most obedient servant,

J. W. HAMILTON,  
*Private Secretary.*

And the following, three days later, from the same source, shows that while Webster did not sleep on his right, his watchfulness availed him little in securing from the colonial authorities either respect for or recognition of these rights which he, at least and not without reason, conceived to be well established:

GOVERNMENT HOUSE,  
*Auckland, March 13, 1845.*

SIR: I am desired by the governor to acknowledge the receipt of your letter of the 10th instant in reference to spars, taken for Her Majesty's navy by Commander Wood, of Her Majesty's storeship Tortoise, from off land, in the Bay of Plenty, to which at the time you laid claim. In answer to your claim for compensation, I am directed by the governor to say that he will refer the case to the decision of the home Government, being unable himself to do anything at present.

I have the honor to be, &c.,

J. W. HAMILTON,  
*Private Secretary.*

Mr. W. WEBSTER, *Auckland.*

One other fact it is proper to state here. In his memorial presented to the President in 1858, Mr. Webster exhibits a copy of his title deeds from the chiefs from whom he purchased, for the several tracts of land to which he laid claim, and which appear very distinctly marked and described by metes and bounds, on a map which also accompanied the memorial referred to, and which I annex as a part of this report.

Soon after the report of Mr. Secretary Fish to the House of Representatives, July, 1876. Mr. Webster, with a view to the prosecution of legal remedies in the courts of Great Britain, laid his case before eminent counsel in New York.

From the Hon. J. W. Edmonds he had already, in 1861, obtained a written opinion, a printed copy of which I append hereto. Upon the advice received still more recently from lawyers equally distinguished, he proceeded to London, and there submitted the case to a learned English barrister. He was advised that the home courts had no original jurisdiction in the matter: that any legal proceedings contemplated must be commenced in the New Zealand tribunals, and that the case could reach the home courts of Great Britain only, if at all, by appeal from the colonial decisions. He next, through the interposition of an English friend, obtained a hearing at the colonial office, and there pressed his claim as best he could; but there also he was courteously informed that nothing could be done in England; that his recourse must be to the colonial authorities of New Zealand, and that the home Government would only take cognizance of the subject upon such reports as might ultimately be sent from the local government authorities of New Zealand. Having, as he considered, already exhausted all reasonable means of redress before the colonial authorities, and entertaining no hope of a different result from a repetition of these efforts, Mr. Webster

abandoned any further attempt to get redress by direct appeal to the British Government, returned home, and has now presented his memorial to Congress.

A copy of this memorial was handed to the Secretary by the Hon. S. S. Cox, chairman of the Committee on Foreign Affairs, with request for information upon which this report is called for. The facts above summarized, not in chronological or any methodical order, for I could not well observe either, are brought together for the twofold purpose of showing the history of the claim, and its present status. I have in this statement carefully avoided the argumentative features of the claimant's narrative, and omitted as far as possible the deductions which he makes, although these latter are by no means unreasonable or illogical from his standpoint. I find from these facts and circumstances, supported as I think they are by ample documentary and circumstantial proofs, the following facts and conclusions:

I. That Webster is a native-born citizen of the United States, and that he has never done any act nor taken steps looking to a change of his nationality or that in any way impairs his rights as an American citizen.

II. That he purchased the lands in New Zealand, which he claims in his memorial, from the proprietary chiefs of that country for valuable consideration.

III. That the proprietary as well as the sovereign rights of the native chiefs and rulers of New Zealand were formally admitted and acknowledged and recognized by the British Government prior to the acquisition of the country by Great Britain.

The Marquis of Normanby, in his dispatch (No. 1) of the 14th of August, 1839, to Captain Hobson, lieutenant-governor, says: "I have already stated that we acknowledge New Zealand as a sovereign and independent state, so far, at least, as it is possible to make that acknowledgment in favor of a people composed of numerous dispersed and petty tribes who possess few political relations to each other, and are incompetent to act or even to deliberate in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's immediate predecessor, disclaims, for herself and her subjects, every pretension to seize on the island of New Zealand, or to govern them as a part of the dominions of Great Britain, unless the free and intelligent consent of the nations expressed according to their established usages shall be first obtained."

IV. That the cession above referred to by the chiefs of New Zealand to the British Crown was made by the treaty of the 6th of February, 1840.

V. That Webster's purchases of the land claimed by him were all made from the same and other chiefs prior to such cession to Great Britain, and that the instruments of conveyance which he exhibits are equally good in form and solemn in character with the treaty itself.

VI. That the right of foreigners to lands thus purchased from the native chiefs was recognized by the British Government. Lord Aberdeen, in his note of the 10th of February, 1844, to Mr. Everett, says: "Instructions were forwarded to the governor of that Island, in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that when aliens had acquired land from the chiefs, prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claim should be acknowledged."

VII. That there is no suggestion in the whole history of the case that Webster's purchases were not *bona fide* and for a valuable, and, at that time, sufficient consideration; and further, that throughout the whole proceedings there is not found an intimation or reflection against his personal character for integrity, truthfulness, and fair dealing.

VIII. That, notwithstanding the above acknowledgment of Lord Aberdeen for his Government, the extensive and valuable tracts of land thus purchased by Webster have been taken possession of and appropriated to the uses of the Crown by the British authorities in New Zealand, the only exceptions being the few small tracts selected here and there through the island, which went to make up the five thousand acres confirmed to Mr. Ranulph Dacre, a British subject.

IX. That Webster made use of every reasonable and available means, both with the colonial and home authorities of Great Britain, to secure repossession of his lands, or a money indemnity for their loss, but without avail.

X. That while the general question to land titles held in New Zealand by American citizens, was, in 1841 to 1844, made the subject of correspondence between the United States legation at London and the British foreign office, no correspondence took place with regard to Webster's claim (see Mr. Fish's report to Congress, *ante*); that Webster was then pursuing his remedies directly with the British home and colonial governments. That he presented no claim to this

Government until 1858, and that consequently the report made in this Department in September of that year was based on a misapprehension of the real facts, and should not be allowed to operate to his prejudice.

XI. That Mr. Secretary Fish, when he made his adverse memorandum (May 11, 1869), must have been misled by this 1858 report or by a failure to furnish him the true antecedent facts of the case as they existed in the Department; that Webster's case can not properly be considered barred by the terms of the convention of 1853, inasmuch as it not only had not been brought to the attention of the Department at that date, but, moreover, had not then accrued, and therefore that this action should not prejudice the claim.

In Secretary Seward's letter of the 26th of January, 1869, in reference to the Johnson-Clarendon treaty.

XII. That Webster's claim for indemnity against the Government for the value of his lands and other property, of which he was deprived, without warrant of right or law, with the increments arising from improvement, enhancement of value, etc., is a just and subsisting claim, and one that presents just grounds for the interposition of his own Government. The reason assigned by the New Zealand governor for the nonrecognition of Mr. Webster's New Zealand land titles can hardly be called either just or reasonable. Here it is:

"His excellency has examined and taken advice respecting your land claims, 305 H and 305 I, and is sorry to find himself precluded from authorizing any further grant made to you at present on account of the largeness of the grants already made in your name."

Webster's legal title to the several tracts, making altogether about 500,000 acres, was equally valid with that to the 5,000 acres recognized, and which he had previously sold or disposed to a British subject; but, says Captain Hobson, the estate was too large in area. This of itself from a British standpoint sounds like a bit of humor. There are plenty of Australian estates of British subjects much larger in acreage and value, and not a few even in the limited space of the United Kingdom. If the money value enters into his excellency's estimate of the "largeness" of the Webster estate, then examples are numerous of the acquisition and possession of much more valuable land estates by British subjects in Australia and India, and are not wanting even in the United States. No one can read the history of this claim as presented in the simple facts without being struck with the enterprise and business capacity of the claimant; and it is also to be noticed to his credit that, during his somewhat romantic career in New Zealand, he secured and maintained the unqualified esteem and confidence of the native chiefs and people. He increased the value of his large property by vast improvements in docks, harbors, and dwellings, and, as it now turns out, rendered very essential service to the British Government by stimulating those natives, who have now become British subjects, to habits of industry and ways of civilization.

His claim is large in amount and might at first glance seem exaggerated, but that fact, even if true, furnishes no just reason for denying it consideration. It is a common objection to most private claims against governments. It is, however, unnecessary to discuss that question here, as it will be more properly a question for consideration in the prosecution of such measures, if any, as may be adopted, looking to a final adjustment of the claim.

Respectfully submitted.

HENRY O'CONOR.

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[House Report No. 1787, Forty-sixth Congress, second session.]

The Committee on Foreign Affairs, to whom was referred the joint resolution in relation to the petition, etc., of William Webster, a native-born citizen of the United States, who seeks the aid of the Government of the United States in furtherance of his claim against the Government of Great Britain, having had the same under consideration, submit the following report:

The joint resolution referred to this committee on the 9th day of February, 1880, is as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the petition of William Webster and the accompanying papers be transmitted to the executive department, with the request that the President take such steps as in his opinion may be proper and in accordance with international law, to secure to the said William Webster a final settlement and adjustment of his claim against the Government of Great Britain

in relation to the sequestration of the lands and property in New Zealand claimed by said William Webster, an American citizen, by purchase of the native chiefs of that country before its cession to and occupation by the Government of Great Britain."

The committee called on Hon. William M. Evarts, Secretary of State, and handed him the papers in the case, and by the Secretary's direction all the information upon the records and files of his Department relating to the claim of Webster was furnished to your committee and is embraced in this report.

[Information received from the Department of State.]

Claim of William Webster, a citizen of the United States, against the British Government.

Memorial and papers handed to Secretary by the Hon. S. S. Cox, April, 1880. This claim has been formally before the Department since September, 1858, when a printed memorial, with accompanying papers, was referred for examination by President Buchanan. Notice of the occurrences from which the claim arises was, however, brought to the attention of the Department by a letter of the 23d of February, 1841, from J. H. Williams, esq., then United States consul at Sydney, New South Wales. Mr. Williams, in this letter, which was received October following, simply states that he transmits a copy of a letter addressed to him by Mr. William Webster, for the Secretary's perusal, and then leaves Webster to tell his own story. Webster, in the letter referred to, states that he is a citizen of the United States, a native of Maine; that he first went to New Zealand in 1835, and being pleased with the country, remained there, and that during the succeeding five years he devoted himself to purchasing and improving and cultivating land and teaching the natives the arts of civilization; that he made his purchases of the several tracts, shown on the map which accompanied his letter, from the native chiefs, and that he expended in such purchases £15,627, about \$78,000. The total of the land amounts to five hundred thousand acres. In addition to this, he alleges that he expended large sums in making improvements, building wharves, improving harbors, and erecting houses. In 1840 the British Government acquired possession and sovereignty of the island by treaty concluded with certain chiefs, and from that New Zealand became a British colonial possession. Capt. William Hobson, royal navy, was appointed lieutenant-governor of the province, and under instructions from the Marquis of Normanby, then secretary for the colonies, immediately proceeded to put in force such regulations as were prescribed by the home Government in relation to the people, natives and foreigners, then inhabiting the island. By a proclamation, bearing date the 30th of January, 1840, the governor makes known the disposition of the government with respects to land titles. It is found on pages 12-13 of the annexed pamphlet.

1st. Her Majesty, taking into consideration the present as well as future interests of her subjects and also the rights of the chiefs and native tribes, does not deem it expedient to recognize as valid any titles to lands which are not derived from or confirmed by Her Majesty.

2d. But, in order to dispel any apprehensions that it is intended to dispossess the owners of land acquired on equitable conditions and not in extent or otherwise prejudicial to the present or prospective interests of the community, a commission is appointed, with certain powers to be derived from the governor and legislative council of New South Wales, to inquire into and report on all claims to such lands, and all persons having such claims will be required to prove the same before the said commission when appointed.

The treaty by which the British Government acquired title to New Zealand is dated the 6th of February, 1840, some days, as it is seen, after the above proclamation. Nothing is said in the proclamation about Americans or other non-British subjects, or what, if any, course the new government intended to pursue in regard to their land titles. There were many Americans besides Webster, and all of them refused to recognize the legality of the proposed commission. It was under this condition of things that Mr. Webster addressed his letter to Consul Williams, as the most certain and convenient way of bringing the facts to the notice of the Government of the United States, not as to himself alone, but as to all Americans similarly situated. He, however, formulated no claim at that time, and made no demand for indemnity, for, as he states himself, he had not then been despoiled of his lands.

The British authorities took possession of the most valuable of Mr. Webster's lands. He got none, although there was a quasi recognition of his title by the

so-called land commission in the fact that, in 1858, the New Zealand government confirmed to Mr. Ranulph Dacre five thousand acres of land, which he (Dacre) had purchased from Webster in 1844. Besides the loss of his lands, Mr. Webster claims to have suffered large losses from interference with his business, especially shipping. He had then several vessels, both in the coasting and foreign trade. In 1858, after all efforts to get his claims to the land recognized had failed, both in New South Wales and in England, he brought his claims before this Government, Reverdy Johnson, A. Anderson, and J. W. Denver being then his counsel. His memorial was addressed to the President and referred to the State Department. A memorandum is found, dated the 15th of September of that year, headed "Report," but not signed by any one, which appears to be all the action taken by the Department at that time in relation to the matter.

The claim was again brought to the attention of the Department in May, 1869, and on that occasion there is another memorandum of the Secretary, in Mr. Fish's own handwriting, dated May 11, which, like the report without signature of 1858, is adverse to the claim.

In the summer of 1876 a resolution passed the House of Representatives, calling upon the President for correspondence in regard to Mr. Webster's claim between the Department and the Government of Great Britain. On the 13th of July of that year this resolution was answered, and Mr. Fish, in his letter, says: "No correspondence has taken place between the Department of State and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by William Webster, an American citizen. In the years 1841 to 1844 certain correspondence was had between the legation in London and the foreign office of Great Britain in reference to the general question of the land titles held in New Zealand by American citizens, but no correspondence has taken place in regard to the particular claim of William Webster."

A copy of that correspondence\* is inclosed, and its consists of—

1st. A letter of the 26th of December, 1843, from Mr. Everett to Lord Aberdeen.

2d. A brief reply from his lordship, of the 3d of January following, saying the subject had been referred to the secretary for the colonies.

3d. A note of the 10th of February, 1844, from Lord Aberdeen to Mr. Everett, conveying the reply of his Government, the chief point of which is the following: "That, in consequence of certain questions raised by the American consul at Sydney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged, but that where a doubt arose whether the alien made a *bona fide* purchase of the land, the settler should be treated as any British subject and his claim disposed of accordingly."

The following letter from Mr. Secretary Seward, of January 26, 1869, which appears to have been transmitted to Congress with the above correspondence, is deemed pertinent to the conclusions reached in this report:

"I have to acknowledge the receipt of your letter of the 15th relating to claims of citizens of the United States growing out of occupation of the islands of New Zealand by the authorities of Great Britain in 1840, and suggesting the incorporation of a clause in respect to such claims in the convention for the general adjustment of private claims between this Government and that of Great Britain. In reply, I have to state that it would be inexpedient, in my judgment, to attempt any modification in the convention relating to claims, which is now awaiting ratification, and that it will be preferable, if the provisions of that convention shall be found insufficient to admit the examination of the claims to which you refer, that they should be made the subject of separate and independent negotiations at another time."

With reference to what proceedings were had before the British land commission sitting at Auckland touching Webster's titles or claims, there are no means of ascertaining their nature or the mode of procedure. The following letter, bearing date the 10th of March, 1845, from Governor Hobson's (Fitzroy's) private secretary to Mr. Webster, and which is attached to Mr. Webster's memorial as an exhibit, will convey some idea of the result, so far as their proceedings affected Webster:

\* See pages 133 to 135.

*Schedule of titles proved before commission.*

No. of claim.	Acreage.	Situation.
305	250	Coromandel Harbor.
305 A	600	Coromandel Harbor.
305 B	1,500	On the river Thames.
305 C	2,500	Coromandel Harbor, Taupiri.
305 D	1,000	Coromandel Harbor, Waian.
305 E	100,000 about.	Great Barrier Island.
305 F	300 about.	Motutanpiri.
305 G	40,960	Point Rodney.
305 H	-----	We have not been able to trace this claim.
305 I	3,000	On the Nickiaranga Creek.
305 J	6,000	Big Mercury Island.
305 K	80,000	Left bank of the river Brako.
305 L	3,000	Wanaki, on the river Waihow.
306 M	2,000	Southeast side of the river Weahako.

GOVERNMENT HOUSE, *March 10, 1845.*

SIR: I am desired by the governor to acquaint you that his excellency has examined and taken advice respecting your land claims marked 305 H and 305 I, and is sorry to find himself precluded from authorizing any further grant made to you at present, on account of the largeness of the grants already made in your name. The governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

I have the honor to be, sir, your most obedient servant,

J. W. HAMILTON,  
*Private Secretary.*

And the following, three days later, from the same source, shows that while Webster did not sleep on his rights, his watchfulness availed him little in securing from the colonial authorities either respect for or a recognition of those rights which he, at least, and not without reason, conceived to be well established:

GOVERNMENT HOUSE,  
*Auckland, March 13, 1845.*

SIR: I am desired by the governor to acknowledge the receipt of your letter of the 10th instant, in reference to "spars" taken for the use of Her Majesty's navy by Commander Wood, of Her Majesty's storeship Tortoise, from off land in the Bay of Plenty, to which, at the time, you laid claim.

In answer to your claim for compensation, I am desired by the governor to say that he will refer the case for the decision of the home Government, being unable himself to do anything at present.

I have the honor to be, sir,

J. W. HAMILTON,  
*Private Secretary.*

Mr. W. WEBSTER, *Auckland.*

One other fact is proper to state here. In his memorial, presented to the President in 1858, Mr. Webster exhibits copy of his title deeds from the chiefs from whom he purchased for the several tracts of land to which he laid claim, and which appear very distinctly marked and described by metes and bounds on a map which also accompanied the memorial referred to, and which is annexed as a part of this report.

Soon after the report of Mr. Secretary Fish to the House of Representatives (July 1876), Mr. Webster, with a view to the prosecution of legal remedies in the courts of Great Britain, laid his case before eminent counsel in New York. From the Hon. J. W. Edmonds he had already, in 1861, obtained a written opinion, a printed copy of which is hereto appended. Upon the advice received still more recently from lawyers equally distinguished he proceeded to London, and there submitted the case to a learned English barrister. He was advised that the home courts had no original jurisdiction in the matter; that any legal proceedings contemplated must be commenced in the New Zealand tribunals, and that the case could reach the home courts of Great Britain only, if at all, by appeal from the colonial decisions. He next, through the interpo-

sition of an English friend, obtained a hearing at the colonial office, and then pressed his claim as best he could, but there also he was courteously informed that nothing could be done in England: that his recourse must be to the colonial authorities of New Zealand, and that the home Government would only take cognizance of the subject upon such reports as might ultimately be sent from the local government authorities of New Zealand. Having, as he considered, already exhausted all reasonable means of redress before the colonial authorities, and entertaining no hope of a different result from a repetition of these efforts Mr. Webster abandoned any further attempts to get redress by direct appeal to the British Government, returned home, and has now presented his memorial to Congress.

A copy of this memorial was handed to the Secretary of State by the Hon. S. S. Cox, chairman of the Committee on Foreign Affairs, with request for information.

The facts above summarized are brought together for the twofold purposes of showing the history of the claim and its present status.

These are the facts and circumstances, supported as they are by ample documentary and circumstantial proofs:

I. That Webster is a native-born citizen of the United States, and that he has never done any act or taken any steps looking to a change of his nationality or that in any way impairs his rights as an American citizen.

II. That he purchased the lands in New Zealand, which he claims in his memorial, from the proprietary chiefs of that country.

III. That the proprietary as well as the sovereign rights of the native chiefs and rulers of New Zealand were formally admitted and acknowledged and recognized by the British Government prior to the acquisition of the country by Great Britain.

IV. That the cession above referred to, by the chiefs of New Zealand to the British Crown, was made by the treaty of the 6th of February, 1840.

#### OPINION OF J. W. EDMONDS, COUNSELOR-AT-LAW.

It seems to be quite apparent from Lord Normanby's letter of instructions to Lieutenant-Governor Hobson, that the colonial department of the British Government were at that time aware of Webster's purchases of land and intended to cut them off.

Or at least if they were not aware of it, and that was not the direct object of those instructions, they were so framed as to produce that result.

I. The colonial secretary admits the sovereignty of the natives and their paramount title to the land.

II. He avows that Great Britain has no purpose of conquest in view but to obtain sovereignty by treaty and title by grant from the natives.

III. Starting with these views, which would commend themselves to the regard of the civilized world, the secretary has, however, in view another purpose, and that is to get rid of the titles which "land-jobbers," as he calls them, may already have acquired.

IV. He proposes to attain that purpose only so far as British subjects are concerned.

Because the basis already admitted and international law would forbid British interference with titles already acquired by persons not British subjects from natives whose sovereignty and title were alike conceded.

V. Therefore it was that all proceedings by Lieutenant-Governor Hobson and his Government aim nominally at British subjects alone, and it was only by regarding Webster as a British subject that any dealing whatever could be had with Webster's claim.

1. Hence, doubtless it will be found to be a position insisted upon by the British Government that Webster was a British subject.

2. For if he is not, the whole action of the British authorities as to his property would be entirely without warrant.

VI. But there is no positive limitation of authority to British subjects: it is a limitation by implication only, and Lieutenant-Governor Hobson might well understand Lord Normanby's instructions as comprehending all purchases from the natives as well by others as by British subjects.

VII. But whatever the limitation or extent of action in this respect, the purpose of the colonial secretary to destroy individual grants like those to Webster is very plain.

1. He avows that circumstances beyond their control have compelled the Brit-

ish Government to alter the course which recognized the title to the soil and to the sovereignty to be indisputably in the natives.

The sending Captain Hobson there was to carry out this change of views, and that could be done only by getting sovereignty and title both vested in the British Government.

This purpose thus avowed runs through the whole action of the British authorities.

2. He avows as one reason for sending a governor there to be that "extensive cessions of lands have been obtained from the natives."

This consideration is not confined by him to cessions to British subjects, but is broadly stated in terms embracing *all* cessions.

3. He avows his object to be to obtain a contract that no lands shall be ceded except to the Crown of Great Britain.

Thus clearly showing a purpose beyond mere sovereignty, and a purpose as to title at once in conflict with Webster's claim.

4. He avows a hostility to large landholders, which of itself brings him in direct conflict with us.

5. He avows that the British Government will not acknowledge *any* title (whether held by British subjects or otherwise) which either has been or may be acquired without its sanction, and instructing his lieutenant-governor so to proclaim "immediately on his arrival." He thus *in limine* courts a conflict with our claim.

6. In his reservation, to prevent alarm among actual settlers of lands acquired by them on equitable conditions, he is careful to exclude acquisitions "upon a scale which must be prejudicial to the latent interests of the community."

Thus establishing a conflict with us, inevitable from the magnitude of our claim, at the same time that other settlers are quieted.

7. He instructs his lieutenant-governor that the embarrassments occasioned by such large claims will demand his earliest and most careful attention.

And it is worthy of observation that this is pressed on the lieutenant-governor's attention even more vehemently than the preservation of the title or the sovereignty of the natives.

8. He directs a commission to be formed to ascertain what lands are held by grants from the natives, and how far they ought to be respected.

But this is in terms confined to British subjects, and excludes all inquiry into grants to others; and it is worthy of remark that this is the only part of the instructions on the subject of title which is confined to British subjects.

9. He directs an annual tax on *all* uncleared lands, with the avowed object that a forfeiture for non-payment of the tax may restore them to the demesne of the Crown.

10. And, finally, he avows his main object by saying, "Having by these measures obviated the damages of the acquisition of large tracts by mere land-jobbers, it will be your duty to obtain cessions to the Crown," etc.

So that the Crown, having obtained title at a cheap rate from the natives, might obtain a revenue by selling at a higher rate.

Such are the clearly avowed purposes of the British Government as contained in the instructions of the colonial secretary to the officer sent to take possession of New Zealand. And the acts of that officer are clearly within the spirit of those instructions.

Those acts, therefore, are not merely trespasses on his part for which he would be individually responsible, but are governmental in their character, and for them the Government is responsible to the party aggrieved.

J. W. EDMONDS.

TRINITY BUILDING, *New York City*, 1861.

The committee, then, from a careful examination of the information supplied by the Department of State and of that found in other official papers contained in the pamphlet which is made a part of this report, and after a consideration of the facts therein disclosed, are of the opinion that the claim of William Webster possesses eminent merit, and is entitled to and should receive the favorable action of Congress. The conclusions of your committee are as follows:

The claimant, William Webster, is a native-born citizen of the United States, and has done no act that in any way impairs his rights as such.

He purchased about a half million acres of land in New Zealand from the proprietary chiefs, and paid a large consideration for the same, during five years preceding the British occupation. (See his letter to United States Consul Williams and Consul Williams's letter to the Secretary of State. Pamphlet, pages 19 to 21.)

The proprietary as well as the sovereign rights of the native chiefs and rulers of New Zealand were formally admitted and recognized by the British Government prior to the acquisition of the country by Great Britain. (See Lord Normanby's instructions to Captain Hobson. Pamphlet, pages 17 to 19.)

The cession by the New Zealanders to Great Britain was made by a treaty dated at Waitangi, on February 6, 1840. (See page 14 in pamphlet.) And Webster had, some years previously, purchased his lands from the same chiefs and others who were parties to that treaty, and hence his titles were paramount.

The right of American citizens to their land purchased from the chiefs was recognized by the British Government. (See Lord Aberdeen's letter to Hon. Edward Everett. Pamphlet, pages 32 to 34.)

There is no intimation by the British authorities, in any of the papers in the case, that Webster's land purchases were not *bona fide* and for a valuable consideration; nor does your committee find any reflection upon his personal character for integrity and fair dealing.

That Webster's claim for indemnity against the Government of Great Britain for the value of his lands and other property, of which he was deprived without warrant or right of law, with the increments arising from improvement, enhancement of value, etc., is a just and subsisting claim, and one that presents just grounds for the interposition of his own Government.

Your committee do not deem it necessary to burden this report with a copious citation of authorities. The doctrine is clear and incontestible, and has been accepted and established by Congress, in regard to the duty of the Government in the case of a citizen having a *bona fide* claim against a foreign Government, the payment of which is refused or has been unreasonably delayed.

Your committee therefore recommend the adoption of the accompanying joint resolution.

*Schedule of titles proved before commission.*

No. of claim.	Acreage.	Situation.
305	250	Coromandel Harbor.
305 A	600	Do.
305 B	1,500	On the River Thames.
305 C	2,500	Coromandel Harbor. Taupiri.
305 D	1,000	Coromandel Harbor. Waian.
305 E	About 100,000	Great Barrier Island.
305 F	About 300	Motutanpiri.
305 G	40,960	Point Rodney.
305 H	-----	We have not been able to trace this claim.
305 I	3,000	On the Nickiaranga Creek.
305 J	6,000	Big Mercury Island.
305 K	80,000	Left bank of the River Brako.
305 L	3,000	Wanaki, on the River Waihow.
305 M	,000	Southeast side of the River Weahako.

AFFIDAVIT OF RANULPH DACRE.

I, Ranulph Dacre, of No. 4, Nelson Terrace, Clapham Common, in the county of Surrey, esquire, make oath and say: That I was a merchant carrying on business in Sydney, Australia, and in New Zealand, from the year one thousand eight hundred and thirty-one to the year one thousand eight hundred and fifty-nine, and that I first became acquainted with William Webster, now temporarily staying in London, England, in the year one thousand eight hundred and thirty-five, at the time he went from Sydney to New Zealand. I know of my own knowledge that he was largely engaged in mercantile business there in the year one thousand eight hundred and forty, when Her Majesty's Government declared a right of sovereignty over that country. The said William Webster arrived in Sydney in the latter part of the year one thousand eight hundred and forty, and chartered a bark called the *Planter*, to convey a cargo of spars and other New Zealand produce he had collected there to England for sale. He intended proceeding in the bark to England, whence, I believe, he intended to go to the United States to ask protection from the Government of the United States in regard to title to land he had purchased in New Zealand from native chiefs, which title (with others) had been declared null and void in a proclamation issued under direction of Her Majesty's Government, on the thirtieth day

of January, one thousand eight hundred and forty, the day on which the right of sovereignty was proclaimed over New Zealand. On the eve of the Planter sailing the said William Webster was arrested at the suit of Messrs. Abercrombie & Co., merchants of Sydney, and lodged in the debtor's prison there, and the cause of his arrest arose, as I have been informed by him and believe, in connection with New Zealand land titles, and certain parties who had had some land transactions with the said William Webster.

The Planter sailed from New Zealand as per charter, leaving the said William Webster in prison, where he remained about seven weeks, and until I procured bail to the amount of about twelve thousand pounds for his appearance at court, and thus released him. He returned to New Zealand again after several months' delay in Sydney. I have been informed by Mr. Robert Brooks, of St. Peter's Chambers, Cornhill, London, with whom I had business transactions at the time of the charter of the Planter, and to whom the Planter's cargo was consigned, and I believe it is true that the said William Webster suffered heavy losses by having been detained in Sydney in manner aforesaid. In the year one thousand eight hundred and forty-four, I went to New Zealand to settle the accounts between the said William Webster and myself, and upon that occasion he conveyed to me, and I purchased from him, five thousand acres of land, being part of his various original purchases from the native chiefs prior to one thousand eight hundred and forty; but I did not receive proper grants for the property till one thousand eight hundred and fifty-eight, fourteen years after the sale to me by the said William Webster, when I received from the colonial government the following grants of land, namely: Out of the tract at Point Rodney, containing, by original purchase made by the said William Webster of the native chiefs, eight miles square, or forty thousand nine hundred and sixty acres, I received one thousand nine hundred and forty-four acres; out of another tract purchased by the said William Webster, known as Taupiri, containing by original purchase, two thousand five hundred acres, I received four hundred acres; out of another tract purchased by the said William Webster, on the river Piako, containing by original purchase, eighty thousand acres, I received one thousand two hundred and nineteen acres; and the balance to make up the five thousand acres sold to me by the said William Webster I received in similar proportions out of other of the said William Webster's original purchases. I went from Sydney in the year one thousand eight hundred and fifty-seven to New Zealand, where I remained till the year one thousand eight hundred and sixty-nine. I am well acquainted with the before-mentioned original land purchases made by the said William Webster from the chiefs, and to the best of my knowledge and belief, out of the whole of them there has not been grants made in favor of the said William Webster or his nominees by the colonial government to the extent of nineteen thousand acres, and I believe his lands have been sold or otherwise dealt with, in whole or in part, by the New Zealand Government, or is still withheld from him through the acts and proceedings of that Government. I held in my name, in and during the years one thousand eight hundred and forty-one and one thousand eight hundred and forty-two, several British-built vessels, subject to the order of the said William Webster.

RANULPH DACRE.

Sworn at the Mansion House, in the city of London, this 23d day of July, 1873 before me.

SYDNEY H. WATERLOW,  
Lord Mayor.

#### APPENDIX No. 2.

*Copy of correspondence with the British Government in the Webster case.*

79 LOMBARD STREET, LONDON, 1873.

To the Right Honorable the EARL OF KIMBERLEY,  
*Her Majesty's Principal Secretary of State for the Colonies:*

MY LORD: We have the honor to lay before you the case of Mr. William Webster, a citizen of the United States, in respect to certain land claims of his in the colony of New Zealand. There will be found in the archives of your lordship's department certain correspondence which passed in reference to the matter between Mr. Edward Everett, who was envoy extraordinary of the United States

of America, and Lord Aberdeen, on the 26th December, 1843, the 3d January, 1844, and the 10th February, 1844.

We have obtained from Mr. Webster the facts, which we believe to be strictly true, upon which the following statements are founded, and which will enable your lordship to judge to how great an extent Mr. Webster has been injuriously affected with regard to these claims by the action of the British Government.

Mr. Webster located in business on the northern island of New Zealand, near the site of the city of Auckland, in the year 1835, and was the first white person who established himself there as a trader, having been influenced to do so by the strong inducements held out by the native chiefs, with a view of his coming amongst them to open up trade with foreign countries. At the time of his arrival the natives generally were in a very destitute and barbarous condition. He supplied them with the seeds of vegetables, grain, and fruits, taught them the rudiments of agriculture, and after a two years' residence was able to commence shipping native produce in large quantities to foreign countries. This produce consisted of corn, potatoes, pork, lard, flax, timber, spars, kauri, gum, sulphur, oil, etc., and the immediate effect of this development of trade, so founded and fostered by Mr. Webster, was to reconcile amongst each other the formerly hostile native tribes, who presently united for a distance of 300 miles along the coast in supplying him with produce. Between the time of his settlement and the year 1840, Mr. Webster purchased from the natives numerous extensive tracts of land, amounting altogether to some 500,000 acres. About 150,000 acres of that quantity had only been partially paid for by Mr. Webster; the remainder, however, about 350,000, was entirely paid for in merchandise and money, Mr. Webster expending in such purchases the sum of £16,000, out of which sum £7,717 13s. was reported as having been so expended by the commissioners subsequently appointed in the colony under the authority of the British Government.

At the time of the proclamation of Governor Hobson, of the 30th day of January, 1840 (to which we beg to refer your lordship), Mr. Webster was in quiet and undisturbed possession of the above 500,000 acres. That proclamation stated "that Her Majesty does not deem it expedient to recognize any titles to land in New Zealand which are not derived from or confirmed by Her Majesty." The immediate result of this declaration, which threatened a total disregard of lawfully acquired vested interests, and absolutely ignored Mr. Webster's title, was first to cripple the enormous business he was then successfully carrying on between New Zealand and other countries, to destroy his credit and impair the value of his assets, and finally to reduce him to utter ruin. Immediately prior to the 3d of January, 1840, the date of the proclamation, Mr. Webster's property was worth \$3,000,000. Within two years after he was reduced to comparative poverty, and afterwards, in 1847, when he left New Zealand to seek the aid of the American Government to prosecute his claims, he had hardly a shilling left.

The proclamation stated in addition, "that Her Majesty had been pleased to direct that a commission shall be appointed, with certain powers to be derived from the government and legislative council of New South Wales, to inquire into and report all claims of land acquired on equitable conditions, and not in extent or otherwise prejudicial to the present or prospective interest of the community, and that all persons having such claims would be required to prove the same before the said commission when appointed."

Mr. Webster, desiring to comply as far as possible with the letter of regulations thus laid down without prejudice to his rights as an American citizen, duly sent to the commissioners notice of his principal claims, and incurred great expenses in bringing from time to time numbers of natives from great distances, in some cases hundreds of miles, for the purpose of proving his titles. The principal claims preferred will be found shortly stated in the Official Gazette of the New Zealand government of the 26th May, 1842, and we have appended a schedule of them to this letter.

The lands claimed thereunder amounted in the whole to about 243,100 acres, and from the various official gazettes and papers which we have been able to inspect we have ascertained that grants were actually made to Mr. Webster, or to his assigns, of certain lands in respect of his claims 395 A, B, C, E, G, I, and K, but to the extent of 16,468 acres only.

Mr. Webster states, however, that he duly proved all his claims to the satisfaction of the commissioners, and left a portion of his title deeds with them, but, owing to the pressure of circumstances, he left the colony without getting his titles confirmed. The title, in fact, which was recognized in the grants made,

was applicable to the entire lands claimed, and Mr. Webster's knowledge of the Maori language had enabled him to secure a perfect one from the natives, and which were fully acknowledged before the land commission.

Mr. Webster appealed to the Government of the United States, through its consul at Sydney, New South Wales, in the latter part of the year 1840, but by some unaccountable delay no official action was taken thereon until December 26, 1843, when Mr. Everett brought the matter to the notice of Her Majesty's Government (see his letter of December 26, 1843), to which Lord Aberdeen replied on the 3d of January and 10th of February, 1844. In the latter of these two letters (to which we beg to refer your lordship) Lord Aberdeen states that "in his instructions to the governor of New Zealand, forwarded to him in the month of March, 1841, that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged, but that where a doubt arose whether the alien *bona fide* purchased the land the settler should be treated as a British subject, and his claim disposed of accordingly."

It was in the interval between the first application of Mr. Webster to his Government and the action taken thereon that he was compelled lest he should be open to the charge of *laches* in not availing himself of such facilities as the English Government offered) to submit the same to the commissioners appointed. Though we have made diligent search for the purpose amongst all the papers we were permitted to inspect at the colonial office, and the reports of the correspondence relating to New Zealand, which were ordered to be printed by the House of Commons, and which were presented to the New Zealand agency, we believe, by your lordship personally, but have been unable to find any original report\* or copies submitted at different times by the various commissioners upon claims of this nature, and we are therefore without information as to the ultimate fate of Mr. Webster's. It seems, however, so far as we have been able to gather, that portions of land, amounting in all to 16,468 acres, were granted to Mr. Webster, or his assigns. We are not aware whether these grants were revoked by virtue of the powers and provisions contained in the "land clauses settlement act, 1856," but we believe certain portions, at all events, were obtained by various persons to whom Mr. Webster had made conveyances prior to January, 1840.

The most cogent point in Mr. Webster's case we submit to your lordship is that he is an American citizen, having duly proved his claims, ought not to have been dealt with as he was on the footing of a British subject, having regard to the distinct statement before quoted, contained in Lord Aberdeen's letter to Mr. Everett of 10th February, 1844.

Mr. Webster states that when he consented to prove his title before the land claims commission he was distinctly assured by the governor (Hobson) that he should not be disturbed in the possession of his various properties, and that that promise was kept until Captain Fitzroy became governor. During his term of office Her Majesty's Government took possession of the entire tract in the Bay of Plenty, to which Mr. Webster had proved his title, for the purpose of supplying spars for the use of Her Majesty's navy, and other purposes. In reference thereto we beg to refer your lordship to the letter of Mr. J. W. Hamilton (private secretary to Governor Fitzroy), dated March 31, 1845. The value of the spars taken and trees destroyed Mr. Webster represents to be from £8,000 to £10,000, which constitutes a claim apart from land claims. Mr. Webster has been unable to ascertain if any case was ever submitted to the decision of the home Government, he having, as before explained, left New Zealand in the year 1847. He had waited in New Zealand until that time, daily expecting the recognition of his titles, in accordance with frequent promises, to one of which we beg to refer your lordship, contained in another letter of Mr. Hamilton's, dated March 10, 1845. In consequence of seeing no prospect of a settlement, Mr. Webster then went to Washington to seek the aid of his own Government. Shortly before the outbreak of the American war of secession his case was placed under consideration by a resolution of the United States Senate, but no further official action has yet been taken, and he awaits in this country the result of the present application to your lordship, which he trusts will not be without avail.

Mr. Webster, who has never recovered from the ruinous blow which he sustained in New Zealand, submits that a settlement of these claims should not be further postponed, and he desires only, either that a grant in conformity with "Lord Aberdeen's circular," above quoted, be made to him, or that some satis-

\* These "reports" were not made public, but were suppressed by order of the House Government.—W. W.

factory compensation be accorded by the British Government for the enormous tracts of land of which he has been deprived, and which would have gained very pecuniary profit. He has accordingly instructed us to lay the case before your lordship, in the hope that your lordship may see fit to advise some recognition of his claims without the necessity of his having to resort to a diplomatic correspondence between Her Majesty's Government and that of the United States. It may, perhaps, be found by your lordship impossible (having regard to the dealings which have taken place with Mr. Webster's lands, upon a portion of which part of the town of Auckland and several other townships within the province of Auckland now stand) to reinstate him in his property, and seeing this difficulty, he is willing to accept as compensation any reasonable sum, and in return therefor, by deed duly executed, to release all his rights in the colony, either to the New Zealand government or to such person or persons as the Government may think fit.

We may express a hope that your lordship will be able personally to deal with this question, as Mr. Webster, who is no longer young, fears that a reference of the matter to the colonial government would probably involve a long and tedious correspondence, probably unattended by any practical result, that we have made no allusion to the probable objects which the New Zealand Government had in view in their dealings with Mr. Webster, but, as a matter of fact, Governor Fitzroy endeavored to induce him to take an oath of allegiance to Her Majesty, with the view, presumably, of disposing of his claims upon the footing of a British subject. That, however, Mr. Webster always refused to do.

Perhaps your lordship will allow us incidentally to mention that there does not appear to exist in England a collection of the official gazettes of New Zealand.

If your lordship should feel disposed to accord a personal interview to Mr. Webster, a member of our firm will be happy to attend with him upon your lordship, for the purpose of his affording any explanation deemed necessary or advisable. We feel assured that no effort will be wanting on your lordship's part to rectify, so far as now possible, a course on the part of the British Government which has indubitably resulted in extreme hardship and injustice.

We have the honor to remain your lordship's obedient and faithful servants,

KIMBER & ELLIS.

*The "Schedule" above referred to.*

No. of claim.	Acreage.	Station.
305	250	Coromandel Harbor.
305 A	600	Coromandel Harbor.
305 B	1,500	On the river Thames.
305 C	2,500	Coromandel Harbor, Taupiri.
305 D	1,000	Coromandel Harbor, Waiau.
305 E	*100,000	Great Barrier Island.
305 F	*300	Motutanpiri.
305 G	40,960	Point Rodney.
305 H	-----	We have not been able to trace this claim.
305 I	3,000	On the Nickiaranga Creek.
305 J	6,000	Big Mercury Island.
305 K	80,000	Left bank of the river Piako.
305 L	3,000	Wanaki, on the river Waihou.
306 M	2,000	Southeast side of the river Weahako.

\*About.

Reply to Kimber & Ellis, and the continued correspondence.

DOWNING STREET, October 30, 1873.

GENTLEMEN : I am directed by the Earl of Kimberley to acknowledge the receipt of your letter, received on the 18th of September, urging the claims of Mr. W. Webster in respect of certain land in New Zealand.

I am directed to inform you that the information in this Department differs from the statements made in your letter. His lordship will, however, forward a copy of your letter to the governor of the colony with the request that the subject may be reported upon.

I am to add that it must be understood that Lord Kimberley can not admit any liability on the part of Her Majesty's Government to the claims put forward by Mr. Webster, nor can he undertake, as requested, to deal personally with a matter in which the colonial government are concerned.

I am, gentlemen, your obedient servant,

ROBERT J. N. HERBERT.

Messrs. KIMBER & ELLIS.

On receipt of this they further addressed him:

79 LOMBARD STREET, LONDON, E. C.,  
November 6, 1873.

To the Right Honorable the EARL OF KIMBERLEY,  
*Her Majesty's Principal Secretary of State for the Colonies:*

MY LORD: We have the honor to acknowledge the receipt of your lordship's communication of the 30th ult., in reply to our letter in reference to Mr. Webster's claims of the 17th September last.

We shall feel very much obliged if your lordship will kindly allow us to be informed in what respects the information in your Department differs from the statements made in our letter, as we may be able to explain anything which may require it.

We have the honor to remain, your lordship's obedient and faithful servants,  
KIMBER & ELLIS.

To which the following response was made:

DOWNING STREET, November 15, 1873.

GENTLEMEN: I am directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 10th instant, on the subject of Mr. W. Webster's claims in respect to lands in New Zealand.

I am desired to state that as the governor of New Zealand has been requested to report on the matter, and as it is one for the consideration of the colonial government, his lordship does not think there would be any advantage in his entering into any discussion in regard to it.

I am, gentlemen, your obedient servant,

ROBERT J. N. HERBERT.

Messrs. KIMBER & ELLIS.

DOWNING STREET, November 17, 1874.

SIR: With reference to your letter of the 23d of May, 1874, and to the reply from this office of the 1st of June, I am directed by the Earl of Carnarvon to inform you that his lordship has received the report from the governor of New Zealand which he was called upon to furnish upon Mr. Webster's claims to certain lands in New Zealand.

Lord Carnarvon desires me to inform you that this matter having been most carefully inquired into, the only conclusion which his lordship can come to is that not only has Mr. Webster no claim to compensation, but that he has been treated throughout with exceptional liberality.

I am, &c.,

R. J. N. HERBERT.

To L. C. DUNCAN, Esq.

79 LOMBARD STREET, E. C., June 23, 1875.

MY LORD: We have the honor to forward to you a letter we have received from our client, Mr. William Webster, respecting whose claims to certain lands in New Zealand we laid a statement before your lordship's department in 1873; we beg to add to the statement in Mr. Webster's letter, respecting the Mr. L. C. Duncan to whom he refers, that that person is unknown to us to act on Mr. Webster's behalf, or on our own, in any way whatever, and we shall feel obliged by your furnishing us with a copy of the correspondence which passed between the department and this individual respecting our client or his claims.

We have the honor to remain, your lordship's obedient servants,

HENRY KIMBER & CO.

The Right Hon. the EARL OF CARNARVON,  
*H. M. Principal Secretary of State for the Colonies.*

DOWNING STREET, *June 30, 1875.*

GENTLEMEN: I am directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 23d of June, requesting to be furnished with a copy of the correspondence which has passed between this department and Mr. L. C. Duncan, in regard to Mr. Webster's claims to certain land in New Zealand, whose case was brought before this department by your firm in 1873.

In reply I am to transmit to you copies of the correspondence which has passed with Mr. Duncan, but you must distinctly understand that in furnishing you with this correspondence, which Lord Carnarvon sees no reason to withhold from you, his lordship adheres to the decision expressed to you by his predecessor on the 15th of November, 1873, not to enter into any discussion as to the merits of Mr. Webster's claims, which should be preferred in New Zealand to the colonial government, with whom the decision in the matter rests.

I am to add that Lord Carnarvon thought it right to send Mr. Duncan a copy of your letter and of this reply, and that Mr. Webster has not been in any way prejudiced by Mr. Duncan's action in the matter.

I am, gentlemen, your obedient servant,

W. R. MALCOLM.

Messrs. HENRY KIMBER & Co.

79 LOMBARD STREET, E. C.,

*London, July 19, 1875.*

MY LORD: We have the honor to acknowledge the receipt of your lordship's letter of the 30th ultimo, inclosing copies of certain correspondence with which we requested to be furnished with reference to the claims of Mr. William Webster to lands in New Zealand, and for which we are obliged.

In the reply to our letter, we observe that your lordship declines to enter into discussion as to the merits of Mr. Webster's claims, your lordship stating that they should be preferred in New Zealand to the colonial government. We find, however, on referring to the communication of the 17th November last, contained in the copy correspondence with which your lordship has furnished us, that your lordship comes to the conclusion that not only has Mr. Webster no claim to compensation, but that he has been treated throughout with exceptional liberality!

Although your lordship may desire to avoid entering into a protracted correspondence as to the basis upon which the claims are founded, still we venture to submit that we are entitled from equitable reasons to be made acquainted with the grounds upon which your lordship has arrived at the above conclusion, and we shall therefore feel obliged by your lordship furnishing us with the following information:

*First.* The time when and the manner in which Mr. Webster was treated with exceptional liberality.\*

*Secondly.* The facts or reasons which induce your lordship to arrive at the conclusion that Mr. Webster has now no claim to compensation, and also the time when, according to information in possession of the department, Mr. Webster's right to further compensation were extinguished.

We have the honor to be, my lord, your lordship's obedient servants,

HENRY KIMBER & Co.

The Right Hon. the EARL OF CARNARVON,

*H. M. Principal Secretary of State for the Colonies.*

DOWNING STREET, *July 23, 1875.*

GENTLEMEN: I am directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 19th instant in reference to the claims of Mr. William Webster to lands in New Zealand.

You have already been informed by the letter from the department of the 30th of June last, that Lord Carnarvon can not enter into any discussion of the merits

\* *I. e.*, the "erroneous" executive report on file in the British colonial office.—W. W.

of your client's case, and I am desired to state that his lordship must adhere to this decision, and therefore begs to be excused from replying to the questions you put.

I am, gentlemen, your obedient servant,

ROBERT J. N. HERBERT.

Messrs. HENRY KIMBER & Co.

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### APPENDIX No. 3.

DEPARTMENT OF STATE,  
*Washington, June 21, 1881.*

WILLIAM WEBSTER, Esq.,  
*Washington, D. C.:*

SIR: Your letter of the 16th of April last, in relation to your claim against the British Government growing out of the seizure and appropriation of your lands and other property in New Zealand by the British authorities in that colony during the years 1840 to 1844, has been received.

You desire information in relation to certain statements made in reference to your claim in a communication from the President to the Senate in January, 1859. It would be difficult, if not impossible, to answer your inquiries categorically at this distance of time from the date of that communication. I may state generally, however, that upon a very thorough examination of the case recently made by an officer of the Department charged with such duties, it is found that no claim was directly presented by you, or on your behalf, for indemnity until September, 1858. The general subject of the claims of American citizens to lands in New Zealand became a question of diplomatic negotiation between this Government and that of Great Britain about the time of the acquisition of that territory by the British Government, and it is believed that in making up the report of this Department to the President, upon which the message in question was based, either through inadvertence or misconception of your letter to Mr. Consul Williams—a copy of which that gentleman had forwarded to the Government—the officer charged with its preparation supposed that a claim on your behalf was then before the Department.

The investigations since made show that supposition to have been erroneous. No reason is perceived why that statement should in any way work a prejudice to your claim. It does not so operate in the estimation of this Government, and it is not conceived that it will have the effect of lessening the equities of the demand against that of Great Britain.

I am, sir, your obedient servant,

JAMES G. BLAINE.

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### APPENDIX No. 4.

Brief.]

#### WEBSTER'S CASE.

William Webster, a citizen of the United States of America, claims from the British Government compensation to the amount of £224,624, in respect of lands in the North Island of New Zealand, purchased by him from the aboriginal owners, and, as he alleges, wrongfully taken by the Crown, and afterward sold or otherwise disposed of, in violation of preëxisting rights.

The following is an abstract of the argument in support of the claim:

1. In April, 1840, Lord John Russell, the then secretary of state for the colonies, addressed a memorandum to Lord Palmerston, secretary for foreign affairs, in which the following passage occurs: "The British statute book has, in the present century, in three distinct enactments, declared that New Zealand is not a part of the British dominions; and, secondly, King William IV made the most public, solemn, and authentic declaration which it was possible to make, that *New Zealand was a substantive and independent state.*"

2. In Her Majesty's instructions, conveyed by the Marquis of Normanby to Mr. Consul Hobson, directing him to treat with the aboriginal natives of New

Zealand for the cession of the sovereignty of their country, and the right of pre-emption over their lands to the Crown of Great Britain, it is distinctly affirmed of the native owners that their "title to the soil and sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government." (Parl. Papers, 8th July, 1840, p. 37, *et. seq.*)

3. The treaty of Waitangi, which was the immediate result of Consul Hobson's negotiation, was, in effect, a treaty of union. It provided for the cession to Her Majesty of all the rights and powers of sovereignty, while confirming and guaranteeing to the chiefs and tribes of New Zealand the full, exclusive, and undisturbed possession of their lands and estates, and it reserved to Her Majesty "the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate."

4. The treaty has no reference to lands which the native owners had already alienated, at a time when New Zealand was in the position of an independent state.

5. The Crown, in taking possession in 1840, found British subjects and others (to the number of about 2,000) in quiet and undisturbed possession of tracts of land, by virtue of purchases made direct from the acknowledged native owners.

6. In a proclamation issued by Governor Hobson, of even date with that proclaiming the Queen's sovereignty in New Zealand (January 30, 1840), it is notified "to all Her Majesty's subjects that Her Majesty does not deem it expedient to recognize any titles to land in New Zealand which are not derived from or confirmed by Her Majesty."

7. Allowing that the power to confiscate existing purchases which this proclamation implies would be enforceable in the case of British subjects, the terms of the proclamation cannot be held to extend to subjects of other nations owing no allegiance to the Queen, and who had previously acquired land there. As Mr. Everett very clearly put it in his communication to Lord Aberdeen (December, 1843), "Whatever rights could be acquired to England by the assertion of sovereignty over the islands of New Zealand must be of course qualified by any pre-existing rights of other nations. \* \* \* Neither the United States nor any power, if so disposed, would be permitted, without opposition by England, in establishing an exclusive sovereignty over previously independent islands in the Pacific Ocean, to proceed at pleasure to vacate purchases of land made by British subjects, or to interfere with other interests existing before such assertion of sovereignty was made."

8. Her Majesty's secretary of state, in his instructions to the governor of New Zealand (March, 1841), says that in the case of aliens where the fact of the purchase is undisputed, "the claim should be acknowledged."

9. Without at present considering the blocks on which only one part of the purchase money has been paid, Mr. Webster (who is a citizen of the United States, and an alien in the meaning of the royal instructions) was, it is submitted, entitled to have his undisputed claims of 241,000 acres allowed in full. (See commissioners' report).

10. Of the claims admitted by the commissioners as undisputed, only 16,468 acres have been granted to Mr. Webster or to his assigns. It is contended that his title is indisputably good to the remaining 226,624 acres.

11. The land having been disposed of by grants from the Crown in violation of these rights, the claimant is entitled to compensation, and he claims at the rate of £1 per acre.

NOTE.—The claim argued above is quite independent of alleged rights arising out of incomplete purchases amounting, it is stated, to 250,000 acres more, and special damages in respect of claimant's kauri timber taken and appropriated by the Crown.

W. BULLER,  
*Barrister at Law.*

The above brief is by Walter Buller, esq., barrister at law, who resides at Christchurch, New Zealand.

[See Claims against Venezuela, Gen. Index.]

FIFTY-SECOND CONGRESS, FIRST SESSION.

May 18, 1892.

[Senate Report No. 691.]

Mr. Hiscock, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having had under consideration the bill (S. 2454) for the application of the accretions of the Caracas awards of 1868 to the new awards made in 1889 and 1890, beg leave to report:

The awards of the Caracas Commission, under the treaty of April 25, 1866, amounted to \$1,253,310.30. As representing this sum, 360 certificates of award were issued in 1868, bearing interest at the rate of 5 per cent per annum. On these awards, in payment both of principal and interest, this Government, up to May 19, 1883, realized, out of drafts drawn by the Venezuelan Government, the sum of \$400,047.80 in gold. Out of this sum the Department has paid to the claimants the sum of \$158,836.24. The unexpended balance of the moneys received from Venezuela is thus \$241,211.56. The amount of the fund held by the Department under the designation of the "Venezuela indemnity" is \$358,713.93. The excess of \$117,502.93 of the latter sum over the unexpended balance of the moneys actually received from Venezuela represents a profit or increment resulting from investments in bonds of the United States and dealings in gold in currency.

December 5, 1885, a new convention was entered into between the Governments, and the claims for which certificates had already been issued were reexamined with other claims, and in 1890 new awards were made by the Washington Commission, in part confirming and in part canceling the Caracas awards. Since May 19, 1883, previous to which all payments were made by this Government, the increment from the unexpended balance has been the sum already stated, \$117,502.93.

The investment of the money paid by Venezuela to this Government was unauthorized by law. At the time it was believed to be justified under section 2659, Revised Statutes. The practice, however, of the investment by this Government of funds paid to it under treaty for the satisfaction of claims of our citizens has been discontinued. There is no well-established precedent for this Government giving a foreign government the benefit of increment on funds paid for the satisfaction of claims of her citizens, and, in the judgment of your committee, to apply this increment upon the awards of the Washington Commission, necessarily for the benefit of Venezuela, is contrary to our national custom. It should, however, be taken into consideration that Venezuela is not strong financially, and when she will pay the awards of the Washington Commission is somewhat speculative. Under the treaty she has ten years in which she may make such payments. It will be borne in mind that on account of the reexamination of the Caracas awards by the Washington Commission our citizens have suffered great delay in receiving the money due them. The last payments to the claimants under the Caracas awards were made in May, 1876. This long delay was due to the fact that the awards were assailed as fraudulent in part.

It is difficult to see any equitable claim that our Government has to this increment, and in view of the fact of the long time that the American claimants have waited and must wait for their money, the equitable

proposition is presented that this increment should be distributed to them, though the Government of Venezuela receives the benefit of it in lessening the amount of its indebtedness. As an equitable claim under all the circumstances it is proper that whatever expenses this Government has incurred in respect to these awards against the Venezuelan Government should be deducted from this increment, and your committee therefore report the bill with the recommendation that it do pass with this amendment:

The Secretary of State be, and he is hereby, directed to ascertain and settle the amount expended by this Government in respect of the convention of April 25, 1866, and of the commission thereunder, and of the convention of December 5, 1885, and the commission thereunder, and deduct the same from the accretions upon the money paid to this Government by Venezuela, and the balance of said accretions he is hereby authorized and directed to apply to the payment of the new awards of the Washington Commission under the treaty of December 5, 1885, and to credit the Government of Venezuela under said new award on account of said accretions diminished as aforesaid, as well as with the principal of said funds.

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[See Claims against Venezuela, Gen. Index.]

**FIFTY-THIRD CONGRESS, SECOND SESSION.**

**April 14, 1894.**

[Senate Report No. 330.]

Mr. Turpie, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having had under consideration the bill (S. 756) relating to the disposition of the accretions upon the moneys received by the Government of the United States from that of Venezuela in the course of the payment of the Caracas awards, beg leave to report as follows:

The amount of the awards made by the Caracas commission under the treaty of April 25, 1866, in favor of this Government against Venezuela was \$1,253,310.30. Representing this sum 360 certificates were issued to claimants, whose accounts were then examined and allowed, dated in 1868, and bearing interest at the rate of 5 per cent per annum. On these awards, toward the payment of principal and interest thereof, our Government, up to May 19, 1883, had realized from drafts drawn in our favor by Venezuela the sum of \$400,047.80 in gold, out of which our Department of State, which received and had custody of the award fund, has paid to claimants \$158,836.24.

The unexpended balance of the moneys thus received from Venezuela toward payment of the first award is \$241,211.56. The amount of the fund held by the Department under the designation of "Venezuela indemnity" is \$358,713.93. The excess of \$117,502.93 of the latter sum over the net amount received from Venezuela represents the profit or increment resulting from the investment of the moneys so received in United States bonds, being the interest and premium thereon realized by the Department. This increment or profit constitutes what are known as the accretions, and the disposition of these accretions is the object of the pending bill.

Very soon after the making of the Caracas awards above referred to the Government of Venezuela commenced to enter complaints against the awards rendered by the commission, remonstrated against

the gross frauds and rank injustice of some of the judgments rendered against it, asked a suspension of payments under it, and demanded a new treaty and a new commission for the reexamination of the claims allowed. Although at first very little attention was paid to this complaint, and Venezuela continued to pay under protest, yet our Government, after the payment or partial payment of two installments of the award under the old convention, did suspend its further expenditure thereof to claimants and entertained the proposition for a new treaty and commission on the subject of these claims.

It was not until December 5, 1885, that a new convention was entered into between the two Governments, after which the claims for which certificates of allowance had been already issued were reexamined, and new claims also were heard and determined, and in 1890 new awards were made by the Washington Commission under the second treaty aforesaid, in part confirming and in part canceling the Caracas allowance, and making other additional awards in the premises.

The installments upon the awards made by this new commission have been paid as they accrued, and are yet in process of payment by Venezuela, but the accretions for the accumulated period of time, during which Venezuela still paid but our Government had, owing to causes above stated, ceased to expend, remain yet to be disposed of. American citizens, claimants under the second award, now request that these increments be paid to them upon their certificates of allowance issued under the Washington Commission.

It is well settled, both by civil and common law, that accretions, especially such as the interest or gain upon money, follow the principal and become a part of it, and they belong to the owner of the principal, unless it is otherwise provided by legislation or by the agreement of the parties. But this rule, strictly considered as at law, would not afford, as we think, a satisfactory solution of the question in argument. Under this strictly legal construction the money, after it had been paid to the United States, became undoubtedly, as between the two Governments, our property, and as these increments all accrued since such payments, they were, under the same reasoning, our own. But for various causes hereinafter stated we have been led to take an equitable rather than a strictly legal view of the condition of the fund and of the parties interested therein at the time of these transactions.

The Government of the United States received and held the moneys in question only for one purpose—that was, to disburse them to its own citizens in liquidation of their claims as adjudged against Venezuela. It neither had nor claimed any proprietary right therein, or any other interest save that involved in the expenditure thereof.

Taking into consideration the respective positions of the three parties to the transaction—Venezuela, the United States, and the claimants under the treaty—the first is the payor, the last are the payees, and the United States was, and is, a naked trustee or bailee of the fund for purposes of distribution.

The real owners and beneficiaries of the fund are that class of claimants whose claims were allowed under the provisions of the treaty by the commission created thereby. Being equitable owners of the fund, they are in like manner owners of the usufruct or accretions. Without express provision therefor in some law or treaty, we do not think it can be rightfully claimed that our Government should retain any part of the principal or the increment of the fund as percentage or commission, chargeable against our own citizens for the distribution thereof; nor without a similar provision could such a charge be equitably main-

tained against the Government of Venezuela. There is no such provision, and it follows that the status of our Government herein is that of a voluntary trustee, a bailee, or depositary, without hire, and it best accords with the good faith and dignity of the Republic that this position should remain unchanged.

These views are supported by the practice of this Government in similar cases. In the case of the Geneva award, of what were known as the Alabama claims, Congress directed by law, similar to the enactment provided for in the pending bill, that the interest realized and accrued upon the award fund by its investment for the period of time between the date of payment thereof by Great Britain and its expenditure by this Government in liquidation of the judgments rendered by the commission should be dealt with as a part of the principal. (See U. S. Stat. L., vol. 22, sec. 9, p. 99.)

It seems herefrom that Congress treated these accretions as a diplomatic trust fund, in respect to which our Government had no obligation except that of its lawful disbursement to the claimants.

This action followed the ordinary rule in private transactions between individuals, which is that the trustee is forbidden either to take or make any profit or gain by the increment of the trust fund in his hands. Such increase inures to the benefit of the beneficiaries of the trust. A just view of international equity demands the application of the same principle in this case.

In the same case—that of the Geneva award—it was somewhat later enacted “that the premium realized upon the sale of certain bonds in which the said fund had been invested, namely, the sum of \$385,100.07,” should be used and expended as part of the original fund. (U. S. Stat. L., vol. 24, sec. 5, p. 78.)

And in this case of the Venezuela indemnity fund it will be seen by inspection of the reports heretofore made by the Secretary of State of its condition that the accretions of interest have been always accounted a part of the fund. (See House Ex. Doc. No. 208, Forty-seventh Congress, first session, p. 8.)

And in the same document it appears that the Secretary of State added to the principal, as a part of it, the item of interest earned up to May, 1876, and also the items “accumulation of interest” and “advance on bonds.” And it appears from the same report of Secretary Frelinghuysen that, in the installment paid out and distributed to claimants under the Caracas award in May, 1876, the “interest earned” by the fund in his hands up to that time was also actually expended by him—thus it was dealt with in every way as a part and portion of the principal. It is true this payment was made under the first award, but that does not affect the force or authority of the precedent.

The investment which produced these accretions was not made under section 3659 of the Revised Statutes, or under any law of the United States, but rather under the personal discretion of the Secretary of State, who doubtless intended by such action to provide for Venezuela some return by way of set-off against the interest accumulating upon the awards against her during the prolonged pendency of the question of reopening and reexamining the original awards.

The awards against Venezuela in favor of our citizens under the Washington commission, like those of the Caracas commission, bear interest at the rate of 5 per cent until paid. Venezuela is not a wealthy or very numerous nation, and is one of the family of free American States with which we have had always the most amicable relations, and it would seem, under the circumstances, that the fund

paid by her, and received by us, ought to be administered if not in a generous at least in a liberal and equitable spirit toward this sister Republic.

The committee make the following amendment to the pending bill:

- (1) Strike out the preamble thereof.
- (2) Amend the title of said bill so as to read as follows:

A bill to make disposition of the accretions upon the fund received by the Government of the United States upon the account of the payment of the Caracas awards of 1868, and to apply said accretions to the payment of the new awards made in 1889 and 1890 under the Washington commission.

And when so amended we recommend the passage of the bill.

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[See Claims against Spain, Gen. Index.]

### FIFTY-THIRD CONGRESS, SECOND SESSION.

May 16, 1894.

[Senate Report No. 408.]

Mr. Turpie, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1703) providing for the disposal of the accretions of the *Virginus* indemnity fund, beg leave to report as follows:

Under provisions of the treaty of February 11, 1871, with Spain to ascertain and settle the claims of citizens of the United States against the Government of Spain for injuries suffered by them, a special agreement was made between Minister Cushing and the Spanish minister for foreign affairs, of date February 27, 1875, relative to the *Virginus* indemnity fund.

Under this agreement Spain paid into the hands of the President of the United States, in three installments, a gross sum of \$80,000, to be distributed, under the order and direction of the President, among the several claimants, citizens of this country, for damages in the *Virginus* case on account of injuries done to such of her crew and passengers as were proven to be citizens of the United States.

The completed payment of this sum in gross was made by Spain of date July 1, 1875. A considerable time elapsed from the date of this payment until the several claims for damages by our citizens had been adjusted and settled in such manner as to make a distribution of the fund.

The money paid had been during this time placed at interest in United States bonds, and the expenditure and distribution of the amount of interest and premium accrued on this investment is the object of the pending bill.

The amount of this accretion, according to the latest report of it made by Secretary Bayard, February 10, 1887, was \$24,635.19.

The Government of the United States, as such, suffered no loss and made no claim for any damages on account of the capture of the *Virginus*.

The special agreement with Spain was entered into only on behalf of private citizens of the United States, or their legal representatives, who had suffered damage by reason of such capture. The *Virginus* was what is styled in the correspondence a rebel or pirate steamer,

condemned in the courts of Cuba as such, whose passengers and crew were some of them imprisoned, others executed as being aiders and abettors of the rebellion in Cuba, then being waged against the Spanish authority. Several of these passengers and of the crew were citizens of the United States, and thence the claims for damages arose.

The Spanish Government did not interfere in any manner with the adjudications of the Cuban courts, nor did it undertake to reimburse American citizens severally or particularly for wrongs claimed to have been done them by such adjudications, but it did agree to pay and did pay the sum above mentioned to enable the President of the United States to reimburse such of our citizens, the claimants, as he might determine were entitled to compensation for injuries suffered by them.

Your committee are of the opinion that the real owners of the fund are also the owners of the accretions thereof, unless there be something in the treaty or agreements of the parties to the transaction or in our own statutes making a different disposition of such accretions.

This fund has never been in the Treasury of the United States—the fund, with the accrued interest and premium thereon, remained in the custody of the Secretary of State, subject to the order of the President, and the accretions are subject to such disposition thereof as Congress may direct. The principal has been nearly all expended to claimants, but the interest and premiums accrued during the time in which the claims have been pending for proof and settlement is unexpended. There is no law directing the retention of this interest by the Government or by the President, and we therefore think that these accretions should follow the ordinary rule and be treated as a part of the principal. Neither the principal nor the principal with its increment will suffice to pay the full amount of the claims held to be valid and meritorious. A pro rata distribution among claimants is all that can be provided for.

It would be perhaps no violation of law or treaty or agreement that this Government should retain the accrued interest and premiums, and that we should direct them to be covered into the Treasury. Nevertheless, we believe that it would be inequitable and unjust toward our own citizens that such a course should be taken. Such action would be equivalent to that of allowing a mere naked trustee to make some kind of profit or advantage out of the discharge of the duties of his trust.

It is true that a trustee may reimburse himself out of the fund for expenses of the trust. But in this case the expenses have been borne for the most part by the claimants themselves. They prepared and filed their claims and proofs in each instance. The only labor performed by our Government, or in behalf of the President, has been that of officials in the State Department, who have examined and passed upon the claims so presented. As all this has been done by officials already salaried for the performance of this and similar duties, it does not appear to us equitable that as against its own citizens, the claimants, this Government should in any way or in any behalf recoup any part of the fund upon account of such service.

Your committee therefore favor the passage of the bill, with the following amendment:

Strike out the word "interest" in the title thereof and insert the word "accretions," as the increment of the fund arises from both interest and premium upon the bonds of the United States in which the principal was originally invested.

With this amendment your committee are of opinion that the bill should pass.

[See p. 206.]

**FIFTY-THIRD CONGRESS, THIRD SESSION.****February 14, 1895.**

[Senate Report No. 927.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report upon Senate resolution of July 24, 1894, calling for copies of all papers and correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa of Victor H. MacCord.

The Committee on Foreign Relations, to whom was referred "all papers and correspondence, diplomatic or otherwise," on file in the State Department in connection with the arrest and imprisonment at Arequipa, Peru, of Victor H. MacCord, report as follows:

A careful and patient examination of the copies of papers and correspondence transmitted to the Senate in response to its resolution of July 24, 1894, shows that on February 10, 1883, Victor Hugo MacCord, a citizen of the United States, was made consular agent of the United States in Peru, South America, and on February 20, 1883, was recognized as such at Arequipa, the second city in Peru. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 3.)

In June, 1885, a revolution was in progress in Peru, under the lead of General Caceres, against the then constitutional government of President Iglesias.

The prefect at Arequipa, Manuel San Roman, was a colonel in the Peruvian army, and was the revolutionary chief at Arequipa, under General Caceres.

On June 11, 1885, Mr. MacCord, who was the acting superintendent of the Arequipa, Puno and Cuzco Railroads, received the following order:

**JUNE 11, 1885.****MR. SUPERINTENDENT OF THE RAILROADS:**

You will please place at the disposition of Sergeant-Major Valdez an engine which will to-day leave the station of this city.

God guard you.

**MAN'L SAN ROMAN.**

These are to certify the above-written signature of Man'l San Roman, prefect of the department of Arequipa, under the government of General Caceres, to be of his true and proper handwriting.

British vice-consulate, Arequipa, the 22d day of October, 1888.

[SEAL.]

**ALEX. HARTLEY,***British Vice-Consul.*

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 21, 22.)

And also on the 12th of the same month he received the following order:

**PREFECTURE OF THE DEPARTMENT, June 12, 1885.****MR. MACCORD,***Superintendent of the Railroads:*

You will direct by telegraph all orders of the case, in order that the rail line between Cachendo and La Joya remain completely unused.

You will have for that fulfillment until to-morrow very early, in order that this order may be terminantly complied with. As to that, you being in the power of the authority which has to comply with his duty in these circumstances, the mere fact of the fugitive engine passing from La Joya in the direction of this city will place me in the case of shooting you without the least delay, since you alone are responsible for what may happen.

God guard you.

**MAN'L SAN ROMAN.**

[Indorsement--Translation.]

Mr. A. TAMAYO, *Present*:

Be pleased to dictate the measures most efficient in order to comply with the order above indicated of the señor prefect.

V. H. MACCORD.

Cuartel of San Francisco (date as above).

## CERTIFICATE.

These are to certify the above-written signatures of Man'l San Roman, prefect of the department of Arequipa, under the then government of General Caceres, to be of his true and proper handwriting, the present document having been handed me to keep under date the 12th day of the month of June, 1885.

British vice-consulate, Arequipa, Peru, this 22d day of the month of October, 1888.

ALEX. HARTLEY,  
*British Vice-Consul.*

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 22.)

On the same day, viz, June 12, 1885, simultaneous with the service of the foregoing order of Roman, Mr. MacCord was thrown into prison, whence the order of Roman was promptly complied with by MacCord, from the prison cuartel of San Francisco, as appears from the reference first above given. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 22).

On the same day, June 12, 1885, and shortly after the receipt of the foregoing order of Roman, an officer came to the cell in which Mr. MacCord was confined and advised him to arrange his affairs, as there was an order to shoot him within an hour; and less than half an hour afterwards he was marched out to the parade ground and was stood up before a file of soldiers armed with rifles, and was asked if he wished to say anything, as he was to be shot. He replied that he had committed no crime and had nothing to say. Thereupon the officers, three or four in number, consulted together for a moment, one saying "it was not good to kill a man," when he was led back to his cell a prisoner. (See Protest, Ex. Doc. No. 4, Fifty-third Congress, third session, p. 4.)

On June 13, 1885, Mr. MacCord was notified (verbally) by Subprefect Don Francisco Llasa that by order of the prefect he must pay a fine of 10,000 soles, and at once, or severe measures would be taken against his person to compel payment, and no delay would be allowed. Mr. MacCord replied that "it was entirely unjustifiable to impose a fine imposing culpability without even a semblance of an investigation," and was denied a trial, all the time by him demanded. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 4.)

On the same day, viz, June 13, 1885, the entire foreign colony resident in the city of Arequipa, headed by the consular corps, went in a body to the prefect's house and obtained from him a promise to have Mr. MacCord confined in some other place which offered more security to his life, and that he would be given a prompt trial in accordance with the law of the country. The first request was complied with: the second disregarded. (See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 4, 5.)

On June 14, 1885, notice was given by verbal message from the prefect that if the 10,000 soles were not paid before 3 o'clock in the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and if delayed longer, to 20,000 soles. Mr. MacCord again demanded a trial and protested against the illegality of the fine and nonfulfillment of the promise of prompt trial made the night before to the consular corps and to the several members of

the foreign colony, to which nothing but threatening replies were received, when in desperation Mr. MacCord suggested that the amount of the fine be deducted from the balance due the railway by the Government for work done, which was refused. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 5.)

On June 15, 1885, word was brought Mr. MacCord that by order of the prefect the prisoner MacCord would not be allowed either food or water, and that every article of furniture would be removed from his cell, which order was forthwith carried out. The cell being a damp one, with a brick floor, he was compelled to stand, as everything, even to a rough stone which might have served him as a seat, was taken away. Without anything to eat or drink since the previous day, it was impossible for him to stand such brutality. Thanks to some of the commercial houses of the city of Arequipa, the 10,000 soles were raised, and at 3 o'clock in the afternoon the prisoner was allowed to go at liberty.

On June 16, 1885, Mr. MacCord made a formal protest against the brutal and inhuman treatment inflicted upon him without shadow of cause given or authority to justify it, which is found in full upon pages 4 and 5, Ex. Doc. No. 4, Fifty-third Congress, third session, and which is as follows:

By this public instrument of protest, be it known and made manifest to all whom it may concern that on the 16th day of the month of June, in the year of our Lord 1885, personally came and appeared before me, Alexander Hartley, esq., acting British vice-consul at Arequipa, in the Republic of Peru, Victor Hugo MacCord, a citizen of the United States of North America, acting superintendent of the Arequipa, Peru, and Cuzco railroads, who deposeth as follows:

In consequence of the political events transpiring in this department of Arequipa since the 8th instant, the prefect, Col. Don Manuel San Roman (appointed by General Caceres), had caused all the engines to be retired from the Mollendo division and concentrated in this city. On the 11th instant the said prefect ordered an engine and train of cars to be put at the orders and under the charge of Sergt. Maj. (Sargento-Mayor) Enrique Valdez, for the purpose of conveying troops somewhere on the Mollendo division, which order was immediately complied with.

During the absence of this train from Arequipa, namely, on Friday, the 12th of June, by the perfidy of the engineer and the carelessness of the officer in charge, the engine ran away and joined the opposing forces at Mollendo. Notwithstanding the fact of the train having been put in charge of the commander of the troops, and there being absolutely no blame attachable to any employee of the railway except the engineer who ran away, the above said MacCord was immediately imprisoned in the San Francisco Barracks, where he received the following official note from the prefect, reading textually:

"Prefectura del Departamento a 12 de Junio de 1885. Senor MacCord, superintendente de los ferro-carriles: Diste va por telegrafo todas las ordenes del casa para que la linea ferrea entre Cachendo y la Joya quede imitilizada completamende. Tiene va para ello plaza hasta mañana muy temprano, para que esta orden terminante se cumpla, pues estando como esta va en poder de la autoridad que tiene que cumplir su deber en estas circunstancias, el mero hecho de pasar de la Joya en direccion a esta ciudad la maquina fugitiva, me pondra en el caso de fusilarlo sin la mas pequena dilacion, pues va es el unico responsable de la acouticido-Dios que, a va—Manuel San Roman."

At the foot of the said official note the following instructions were given, reading textually:

"Senor A. Tamayo, Pte. Sierase Vd. dictar las medidas mas eficacies para cumplir la orden arriba indicada del V. A. MacCord, Curatel de San Francisco. Feeha et Supra."

Some time after the receipt of the note an officer came to the cell and advised the prisoner to arrange his affairs, as there was an order to shoot him within an hour, and less than half an hour afterwards he was marched out to the parade grounds and stood up before a file of soldiers armed with rifles, and asked if he wished to say anything, as he was to be shot. He replied that he had committed no crime and had nothing to say; thereupon the officers, three or four in number, retired a short distance and appeared to consult among themselves a moment, when one said, "It is not good to kill a man," and they then led the prisoner back to his cell. In the meantime some friends, who, having been refused admittance to the prisoner, seeing

that some of the officers were under the influence of liquor, and fearing for the life of the prisoner in such a place, had gone to the prefect and asked to have the prisoner changed to some other place of confinement, and about midnight he was transferred to the "cuartel de los Yericcios." On the following day, June 13, the prisoner was verbally notified by the subprefect, Don Francisco Lloso, that by order of the prefect he must pay a fine of 10,000 soles for the escape of the engine, and that it must be paid at once or severe measures would be taken against his person to compel the payment; that no delay would be allowed, and, to the end that his orders might be strictly and rigidly carried out, the prisoner would be remanded to the "cuartel de San Francisco."

Reply (also verbal) was returned, saying that it was entirely unjustifiable to impose a fine implying culpability, without even a semblance of an investigation, and that a trial was asked for in order to establish the facts and show who was responsible for the escape of the engine. It was not allowed, and about 7 o'clock in the evening the threat of returning the prisoner to San Francisco was carried out. In view of this proceeding, after what had transpired there the night before, the entire foreign colony resident in this city, headed by the consular corps, went in a body to the prefect's house and obtained from him a promise to have the prisoner confined in some other place which offered more security for his life, and that he would be given a prompt trial in accordance with the laws of the country. The first was speedily complied with, and the prisoner transferred to the "cuartel de la Maestranza" the same evening. The following day, June 14, notice was given by verbal message from the prefect that if the 10,000 soles was not paid before 3 o'clock in the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000, and if delayed longer to 20,000 soles.

Reply was made reiterating the demand for trial and protesting against the illegality of the fine and nonfulfillment of the promise of trial, made the night previous to the consular corps and to the several members of the foreign colony, which had not been kept, nor has it been up to the time of entering this protest. All was ignored and only threatening replies were received. Convinced of the arbitrary proceedings which were evidently to be employed to compel the payment, it was suggested that the amount of the fine be deducted from the balance due the railway by the Government for work done; this was also refused. On the morning of the 15th word was brought that by order of the prefect the prisoner, MacCord, should not be allowed either food or water, and that every article of furniture be removed from his cell, which order was forthwith carried out. The cell was a damp one, with a brick floor, and the prisoner was compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away. Without anything to eat or drink since the previous day, it was impossible to stand this, and every exertion was now made to procure the money, which had to be borrowed, as on account of the almost complete paralyzation of traffic for nearly a year past, owing to political disturbances, the railway was unable to earn sufficient to even pay its workmen. Thanks to some of the commercial houses of this city the money was raised, and at 3 o'clock in the afternoon the prisoner was allowed to go at liberty.

It appearing by the foregoing deposition that the laws of the country have been defiantly infringed by an authority who, not being a judge, imposes fines and executes punishments arbitrarily and in violation of the laws, and by keeping the prisoner over the time allowed by law, without submitting him to the proper tribunal for trial, and subjecting him to barbarous and inhuman treatment whilst so detained, I, Victor H. MacCord, do make this my formal protest against the arbitrary and abusive proceedings of the aforesaid prefect of Arequipa, Col. Don Manuel San Roman, and do declare that the 10,000 soles in silver coin were paid under pressure of violence and reserving the right to make claim to a higher authority and to the tribunals of justice of the country and to appeal to diplomatic ways, if necessary, in defense of my own personal rights and in protection of the interests confided to my care. Let it be put on record that the first use made of my liberty is to enter this protest at the British vice-consulate, this 16th day of June, 1885.

V. H. MACCORD.

Thus protected and declared in due form of law at Arequipa aforesaid, the day, month, and year first before written.

ALEX. HARTLEY, *Acting British Vice-Consul.*

[Translation of the notes embodied in the foregoing protest.]

Give by telegraph the necessary orders to completely destroy the railway track between Cachendo and La Joya. You have time to comply with the terminant order until to-morrow early, because, being, as you are, in the power of the authority who has to perform its duty in these circumstances, the mere fact of the fugitive engine attempting to pass La Joya in direction to this city, will put in the case of shooting

you without the least delay, as you are the only person responsible for what has happened. God guard you.

MANUEL SAN ROMAN.

Mr. A. TAMAYO,  
*Resident Engineer:*

Please dictate the necessary measures to carry out the above-indicated order of the prefect.

V. H. MACCORD, *San Francisco Barracks.*

Feeha ut supra.

---

*Orders given by Roman while MacCord was in prison.*

[First.]

M. PEREZ. VITOR:

Answer if you have broken the large water pipes. MacCord's life depends on it, and a grave responsibility rests on your shoulders; or do you not comply strictly with my orders.

SAN ROMAN.

[Second.]

M. COMMISSARIAT VITOR:

If you do not comply with the orders to take up the rails on the line ahead and empty the water tanks, and if the engine that has passed there returns, I will shoot MacCord, as he is already under sentence of death. Advise me all night of everything that occurs.

SAN ROMAN.

Such orders were authenticated and certified to by Mr. Alex. Hartley, British vice-consul.

On July 24, 1885, the following protest was, by Mr. MacCord, forwarded to Mr. Buck at Lima, as appears from the following communication:

*Mr. MacCord to Mr. Buck.*

AREQUIPA, July 24, 1885.

SIR: I take the liberty to inclose herewith certified copy of a protest made by me before the British vice-consul in this city on the 16th day of last month, and beg you to advise me what further steps should be taken, if any, in order to make a claim for the outrages committed against my person, as set forth in the said protest.

I have, etc.,

V. H. MACCORD.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 3, 4.)

The above letter, it would seem, was induced by the receipt of a letter by Mr. MacCord from the resident United States minister, Mr. Gibbs, and written from La Paz under date of July 17, 1885, advising MacCord "to make a claim against Peru for at least \$100,000 damages and to give Mr. Buck a detailed account of the whole matter." (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 3.)

The allegations contained in the foregoing protest of MacCord were supported by the following testimonial:

[Inclosure 1 to inclosure 1 in No. 442.—Translation.]

Those who subscribe, natives and strangers, resident in this city during the month of June, 1885, having been well acquainted with the terms of the protest which preceded, made by Mr. MacCord, superintendent of the railroads of Mollendo to Puño and Cuzco, before Mr. Alex. Hartley, vice-consul of Her Britannic Majesty in Arequipa, being animated by a lively sentiment of the strictest justice, consider it due him to declare, as in effect they do declare, that those things which it evidences, having been, in this locality, of public notoriety, absolutely conform with the truth of what occurred, all and each of the facts which are found set forth in the said protest.

Which, with the respective signatures they desire to authenticate, for the ends which Mr. MacCord, the author of the aforesaid documents, may consider proper. Arequipa.

C. WAGNER, [L. S.]  
*Consul of the German Empire.*  
 EMLIO PETERSEN, [L. S.]  
*Consul of the Netherlands.*  
 GMO. MORRISON, [L. S.]  
*Vice-Consul, Argentina.*  
 JOSÉ V. RIVERA, [L. S.]  
*Vice-Consul of Portugal.*  
 JOSÉ EGUREN, [L. S.]  
*Vice-Consul of Spain.*  
 GUILLERMO RICKETTS, [L. S.]  
 G. HARMSEN, [L. S.]  
*Consul of Austria-Hungary.*  
 P. GUINASSI, [L. S.]  
*Consular Agent of Italy.*  
 BERNARDO WEIS, [L. S.]  
*Consul of Bolivia.*  
 ALEX. HARTLEY, [L. S.]  
*British Vice-Consul.*  
 E. PONCIGNON, [L. S.]  
*Vice-Consular Agent of France.*  
 FRA. K. GIBBONS.  
 WILLIAM CANNON.  
 JNO. BOURCHIER.  
 MNR. BUSTAMANTE Y BARREDA.

WALTER NICKOLSON.  
 FEDORO HARMSEN.  
 THOS. PEAKE.  
 JAMES G. BEAUMONT.  
 ADOLFO WESTPHALEN.  
 A. CAMBIAGGIO.  
 CARLOS ACKERMAN.  
 P. GOMEZ CORNESS.  
 TEDEO W. SCHERWOOD.  
 BDO. NYCANDER.  
 PATRICK GIBSON.  
 H. MEIER.  
 PAULSON HNS.  
 JAMES GOLDING.  
 ALEXANDER CLARK.  
 ROBERTO KELLER.  
 H. P. STANFIELD.  
 JUAN GUILLARD.  
 JORGE BUCLEIU.  
 GUILLERMO CIEBANAIK.  
 M. LINARES CUNNING.  
 MIGUEL V. VARGAS.  
 P. M. PARODI.  
 H. SAENZ.

On October 30, 1885, Minister Buck wrote to Minister Bayard informing him that he had received through the mail a page of the *Leader and Herald*, a newspaper published at Cleveland, Ohio, of September 14, 1885, containing a letter giving an account of outrages committed on a United States consular agent at Arequipa, Peru, such letter being dated July 28, 1885. Mr. Buck also stated that the country was then involved in a civil war, and the larger portion of its territory was held by the Caceresta revolutionists, and that the prefect, Manuel San Roman, was the revolutionary chief in Arequipa. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 2.)

On March 22, 1886, Secretary Bayard, in reply to Senator Cameron's inquiry in person, stated that Minister Buck reported that—

The circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. MacCord was found upon the records of the legation, and that the liability of the Peruvian Government for such injuries as MacCord complains of does not appear from anything except the newspaper communication of July last, which you (Cameron) handed me to-day. Under the circumstances, no sufficient ground appears as yet for further action of this Department. (See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 10; also letter to committee received since date of Ex. Doc.)

December 15, 1886, the Government of Peru approved and ratified the action of June, 1885, by the prefect and rebel chieftain Roman, President Iglesias having in the meantime been deposed by the revolutionists under General Caceres, who was installed as President of Peru at Lima. (See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 4, paragraph 16.)

On May 24, 1888, Mr. Buck wrote a dispatch to Secretary Bayard, inclosing letter of Minister Gibbs to MacCord, dated July 17, 1885; letter of MacCord to Mr. Buck of July 24, 1885, with protest of MacCord dated June 16, 1885, such protest containing statements of facts concerning the transaction of June, 1885. Mr. Buck, in his dispatch to Secretary Bayard, under date of October 30, 1885 (Ex. Doc. No. 4, Fifty-third Congress, third session, p. 2), stated he presumed "from inquiries he

had made that the narration was in the main correct," adding that then, May 24, 1888—

Mr. MacCord is at present consular agent of the United States at Molendo, latterly commissioned November 12, 1886. (See Department Register, p. 31; see Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 2, 3, 4, and 5.)

June 23, 1888, Mr. Thorndike, the manager of the railroad company, wrote a letter of complaint to Mr. Buck against renewed persecutions against Mr. MacCord (see Ex. Doc. No. 4, Fifty-third Congress, third session, p. 8), as follows:

LIMA, June 23d, 1888.

SIR: I have the honor to submit to you the accompanying note of cablegrams received from Arequipa in the course of the last few days. No. 1 announces that Messrs. MacCord, Beaumont, and Harmsen have had guards put on them for the purpose of exacting the payment of income tax on the profits which the Southern railroads are supposed to have yielded during the first half of the present year—that is, from the 1st of January until the 30th of this month. Nos. 2, 3, and 4 announce that action had been suspended against Messrs. Beaumont and Harmsen, but that MacCord was still being subjected to abuse and violence.

You are aware that my father was the victim of the most iniquitous spoliation on the 6th of May last; that the fiscal administrators appropriated all materials, such as coal, oil, etc., which were his exclusive property, and that they have recovered the value of freights which were due previous to the said 6th day of May, which constitutes a further spoliation. Now they make use of the public force to exact taxes upon imaginary profits said to have been made in the first six months of this year, when it is a notorious fact that at the beginning of the fifth month the railroads were violently seized by the Government. This last act puts the finishing touch to the systematic outrages which the Peruvian Government, counting upon impunity, has shamelessly committed against the interests of my father.

In defense of those interests, which I at present represent, I beg that you will take note of this new act of violence, and will take steps to secure Mr. MacCord against further molestation, who, as late superintendent of the railroads, only did his duty in obeying the orders given him by his employer, and who has nothing further to do with the railroads now they are in possession of the Government.

As it has, however, been alleged that Mr. MacCord has had guards put on him for matters which do not concern the railroads, I feel called upon to represent to you that he has no business of any other kind in Arequipa, and that he has remained in that city solely for the purpose of acting there as my father's agent.

In view of the foregoing statement it will be evident to you that Mr. MacCord is being persecuted with matters connected with the Southern railways and because it is supposed that he is my father's legal representative in Arequipa.

I solicit your attention to the matter which is the subject of the present communication, and

I have the honor to be, etc.,

E. THORNDIKE.

Hon. CHAS. W. BUCK, *U. S. Minister.*

LEGATION OF THE UNITED STATES, *Lima, Peru.*

I attest the foregoing to be a true copy from the files of this legation. This June 29th, 1888.

RICHARD R. NEILL,  
*Secty. U. S. Legation, Lima Peru.*

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*Mr. Rives to Mr. Black.*

No. 208.]

DEPARTMENT OF STATE,  
*Washington, D. C., June 23, 1888.*

SIR: In your No. 376, of the 24th ultimo, you inclose copy of a protest made on June 16, 1885, before the acting British vice-consul at Arequipa, by Mr. V. H. MacCord, an American citizen, and now consular agent of the United States at Mollendo, detailing the outrages inflicted on him in June, 1885, by the prefect of Arequipa, Col. Don Manuel San Roman, who was appointed by General Caceres.

Mr. MacCord was at that time acting superintendent of the Arequipa, Puno and Cuzco railroads, and had caused all the engines to be withdrawn from the Mollendo division and concentrated at Arequipa. On June 11 the prefect of Arequipa made requisition on Mr. MacCord for an engine and train of cars to convey troops to a

point on the Mollendo division, placing the train under the command of Sergeant-Major Valdez. During its absence, while in charge of the said officer, the engineer detached his engine and ran off with it to the opposing forces at Mollendo.

Although Mr. MacCord was in no way responsible for this occurrence, it having been the result of the treachery of the engineer and the carelessness of the guard, he was thrown into prison and threatened by the prefect that if use was made of the runaway engine he would be shot. A short while afterwards he was taken out of prison, placed before a file of soldiers, and asked whether he wished to say anything, as he was about to be shot. After a conference among the officers he was, however, taken back to prison and ordered to pay a fine of 10,000 soles. Declining to do this, he was deprived of food and drink and left standing in a damp cell, all his furniture, and even a stone on which he had been sitting, being removed. Finally, some of the commercial houses in the city having raised the funds necessary to pay the fine, he was released, and immediately made protest, as above stated, on June 16, 1885.

The case has, you state, never been formally laid before your legation until the date of your dispatch, because it was feared that injury might be done to the railroad interests of Mr. MacCord's employer, Mr. Thorndike.

Mr. MacCord's explanation of his delay in presenting his claim is satisfactory to the Department, and you are instructed to present the case to the Peruvian Government, requesting an explanation.

I am, etc.,

G. L. RIVES, *Acting Secretary.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 1, 2.)

On June 27, 1888, Mr. Buck wrote to Mr. Bayard touching the restraint again of Mr. MacCord at Arequipa, June 19, 1888, and giving copies of cablegrams passing between the ministers of both Governments at Lima. (See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 5, 6, 7, and 8.)

On August 2, 1888, Mr. MacCord's solicitor addressed the Secretary of State as follows:

*Mr. Pettis to Mr. Bayard.*

WASHINGTON, August 2, 1888.

SIR: In your letter to Senator J. D. Cameron, under date of March 22, 1886, relative "to the alleged outrage upon V. H. MacCord, a citizen of Pennsylvania," which occurred in Peru, South America, in June, 1885, you say:

"Mr. Buck reports to this Department that the circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. MacCord was found upon the records of the legation, nor has any been since received."

I now have the honor, as the representative of Mr. MacCord, to inclose you a copy of Mr. MacCord's protest made immediately after his liberation, and at once forwarded to the American minister at Lima, Peru.

I am also informed by letter from Mr. MacCord that the action of the prefect, Manuel San Roman, was, in December, 1886, submitted to the Government of Peru, at Lima, and, without notice to either Mr. MacCord or the railroad company, investigated and approved, an official notice of which was given Mr. MacCord, dated the 22d day of December, 1886.

May I ask if this additional statement of facts does not entitle the case of Mr. MacCord to fresh consideration by our Government?

I have, etc.,

S. NEWTON PETTIS, *Ebbitt House.*

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 10, and for protest, pp. 10, 11, and 12.)

On August 6, 1888, Minister Buck addressed the Department of State as follows:

*Mr. Buck to Mr. Bayard.*

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LEGATION OF THE UNITED STATES,  
Lima, Peru, August 6, 1888. (Received September 3.)

SIR: In pursuance of your instructions, No. 208, of June 23d last, I have addressed a note to the foreign office in matter of the outrage perpetrated against Mr. V. H. MacCord in June, 1885, inclosing a copy of his "protest" made at the time before

the acting English vice-consul at Arequipa and requesting explanation. As you have transcript of the said "protest," I only herewith inclose copy of note to the foreign office.

I am, etc.,

CHAS. W. BUCK.

P. S.—August 11, 1888. From the inclosed cutting and translation, it will be observed this same San Roman, who perpetrated the outrage on Mr. MacCord in June, 1885, has been just reappointed prefect of Arequipa, the Government expressing satisfaction with his service.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 12.)

[Copy of note referred to above.]

*Mr. Buck to Minister of Foreign Relations.*

No. 110.]

LEGATION OF THE UNITED STATES,  
*Lima, August 6, 1888.*

SIR: Under a recent instruction from the Department of State, I am directed to present to the Government of your excellency and request explanation in the case of Mr. Victor H. MacCord, now United States consular agent for Mollendo.

I may in advance say that Mr. MacCord has assigned reasons for not having before presented his claim for the official cognizance of his Government, which the Department of State regards as a satisfactory explanation of the delay.

Premising this, I inclose to your excellency a copy of Mr. MacCord's protest made at the time before the acting British vice-consul at Arequipa, which will place your excellency in knowledge of the circumstances as narrated by him. With which presentation and request for explanation, I renew expressions, etc.

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 12.)

On August 28, 1888, Mr. Alzamora acknowledged the receipt of Mr. Buck's communication of August 6, 1888, containing "instructions from the Department of State to submit the case of Victor H. MacCord, actual consular agent of the United States, and to ask for an explanation of the circumstances, and that Mr. MacCord had given reasons satisfactory to his Government for not presenting his claim sooner," as follows:

MINISTER OF FOREIGN RELATIONS OF THE REPUBLIC OF PERU,  
*Lima, Peru, August 28, 1888.*

MR. MINISTER: Your excellency's esteemed communication of the 6th instant was duly received at this office, in which your excellency indicates having received instructions from the Department of State to submit to my Government the case of Mr. Victor H. MacCord, actual consular agent of the United States at Mollendo, and to ask for an explanation of the circumstances; and that Mr. MacCord has given reasons for not presenting sooner his claim to the Government at Washington, which delay is satisfactorily explained in said Government's mind.

Your excellency incloses a copy of the protest made by Mr. MacCord before Her Britannic Majesty's vice-consul at Arequipa, for my information as to the facts, according to the exposition contained in it; and your excellency terminates, requesting information as to the truth of what occurred.

My Government has never had knowledge of the facts referred to in said protest, nor would it be in its power to satisfy itself of the truthfulness contained in said protest, after the long time transpired, since the protest is dated June 16, 1885.

It appears noticeable that Mr. MacCord should have made no question during all this time after he had not only obtained the full use of his rights, but has exercised his authority as consular agent of the great Republic. It being a most special circumstance that Mr. MacCord has been accredited as consular agent at Mollendo during the administration of the same Mr. San Roman against whom the protest appears to be made, and as your excellency knows, he is prefect of the department of Arequipa, to which Mollendo pertains. It is still more remarkable that Mr. MacCord, having cultivated with the prefect of Arequipa the most friendly relations during two years, without ever having mentioned the protest in question, should make use of it now that Mr. San Roman, in obedience to the orders of the Government, has removed Mr. MacCord from the superintendence of the southern railways, which he exercised, as it appears from said protest.

But no matter what the realities or facts to which Mr. MacCord refers, they can in no case serve as ground for diplomatic action, and still less so after the long time transpired. These were in fact the acts of a chief in arms against the Government

then recognized as legitimate by all nations, especially by the great Republic; the responsibility, if such should exist, does not therefore rest upon the Government of the nation, but personally on the authors of them.

That responsibility, in any case, could not attach except after proof of the acts in question, before the national tribunals, and as the result of their judgment.

Mr. MacCord has therefore no other course but to prosecute judicially the authors of the acts to which he refers in his protest, and which he is bound to prove.

I have no doubt that your excellency will be persuaded by this statement that it is not possible for my Government to furnish your excellency with the information required, and that the principles I have laid down are just, as indicating the only way open to the claimant in order to obtain the reparation which he may believe himself entitled to.

I have pleasure in reiterating, etc.,

YSAAC ALZAMORA.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 17, 18.)

In August, 1888, Mr. Pettis, as the solicitor of Mr. MacCord, called upon Secretary Bayard touching his letter to the Secretary of the 2d of that month, whereupon Solicitor Wharton was directed to take up the subject, examine it, and give the necessary direction for a thorough investigation, who outlined the form of a memorial which was formulated by Mr. Pettis and inclosed to Solicitor Wharton for criticism, and which called forth the following letter:

HOTEL KAATERSKILL, *August 29, 1888.*

DEAR JUDGE PETTIS:

The inclosed, with your note, was forwarded to me at this place. As you were referred to me for your information by the Secretary, it gives me much pleasure to give any suggestions as may not be inconsistent with the semijudicial position I fill. As to the body of the memorial, I do not feel competent at present to speak. As to one deficiency in form, I beg leave to advise you. It will be necessary to state the nature of the petitioner's citizenship, whether by birth or naturalization; to specify how long he has been in Peru and on what business; to show, if such be the case, that he has always kept up his American citizenship, that he has represented American interests in Peru, that his expectation has always been to return to the United States, that his residence in Peru was only temporary for business purposes, and that he has never acquired a domicile in Peru. The memorial, as thus amended, must be verified by affidavit, and when thus perfected, addressed to the Secretary of State.

I send this to Washington to be copied and forwarded to you thence.

FRANCIS C. WHARTON.

Under date of October 2, 1888, Mr. MacCord's solicitor addressed the following letter to the Secretary of State:

MEADVILLE, PA., *October 2, 1888.*

SIR: Since the receipt of Mr. Secretary Adee's reply to mine of the 25th of last July, addressed to me under date of August 14, 1888, I concluded to make a formal claim in favor of Mr. V. H. MacCord against the Peruvian Government, in South America, which I have the honor to inclose to you herewith.

I have the honor to be, your obedient servant,

S. NEWTON PETTIS.

HON. THOMAS BAYARD,

*Secretary of State, U. S. A.*

(Ex. Doc. No. 18, Fifty-third Congress, third session, p. 2.)

[Memorial inclosed.]

HON. THOMAS F. BAYARD, *Secretary of State.*

The memorial of Victor H. MacCord, at present sojourning at Arequipa, Peru, South America, begs leave to present:

First. That he is a citizen of the United States, and was born in Mercer County, Pa.

Second. That he has been in Peru, South America, most of the time since 1870, and much of the time in the employ of the Mollendo, Arequipa and Puno Railroad Company, and at one time acted as United States consul in Peru.

Third. That he visited his home in Pennsylvania in 1883, from there going back to Peru for the purpose of closing up his affairs in South America, which, he informed his relations in Pennsylvania, he thought he could do within two years, with the

intention of returning to his home in Pennsylvania, never having abandoned his United States citizenship.

Fourth. That while in Peru he represented United States interests, that it has always been his intention to return to the United States, and that his residence in Peru has only been temporary and for business purposes, and that he has never acquired a domicile in Peru or out of the United States.

Fifth. That he was in June, 1885, an employee of the Mollendo, Arequipa and Puno Railroad Company, in the Republic of Peru, South America, with his headquarters at Arequipa.

That on or about the 12th day of June, A. D. 1885, your memorialist was, by the order of the prefect of the city of Arequipa, Peru, Col. Don Manuel San Roman, without any cause or provocation, arrested and imprisoned in the San Francisco Barracks, at Arequipa, and while so imprisoned and in such confinement your memorialist received from the said prefect a communication, of which the following is a true copy:

"Give by telegraph the necessary orders to completely destroy the railroad track between Cachendo and La Joya. You have time to comply with this terminal order until to-morrow early, because being, as you are, in the power of the authority, who has to perform its duty in these circumstances, the mere fact of the fugitive engine attempting to pass La Joya in direction of this city will put me in the case of shooting you without the least delay, as you are the only person responsible for what has happened.

"God guard you.

"MANUEL SAN ROMAN."

At the foot of which official note the following instructions are given:

"Mr. Tamays, resident engineer: Please dictate the necessary measures to carry out the above-indicated order of the prefect. V. H. MacCord, San Francisco Barracks, 'Fecha ut supra.'"

Seventh. That some time after the receipt of the foregoing note or communication an officer came to the cell in which your memorialist was confined and advised him to arrange his affairs, as there was an order to shoot him within an hour, and that in less than half an hour afterwards he was marched out to the parade ground and stood up before a file of soldiers armed with rifles, and asked if he wished to say anything, as he was about to be shot; whereupon your memorialist replied that he had committed no crime, no offense, and had nothing to say. Thereupon three or four of the officers retired a short distance and appeared to consult among themselves for a moment, when one said, "It is not good to kill a man," and then led your memorialist back to the cell from which he had been taken.

Eighth. That upon the following day your memorialist was verbally notified by the subprefect that by order of the prefect your memorialist must pay a fine of 10,000 soles, and that it must be paid at once or severe measures would be taken against his person to compel the payment, and that no delay would be allowed, when your memorialist replied that it was entirely unjustifiable to impose a fine implying culpability without even a semblance of investigation, and asked that a trial be given him, which was refused.

Ninth. That soon after the entire foreign colony resident in the city of Arequipa went in a body to the prefect's house and obtained from him a promise to have your memorialist (still a prisoner) confined in some other place which offered more security for his life, and that he would be given a prompt trial in accordance with the laws of the country.

Tenth. That on the following day, June 14, notice was given your memorialist, by verbal message from the prefect, that if the 10,000 soles was not paid before 3 o'clock on the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and if delayed longer to 20,000 soles; whereupon your memorialist again protested against the illegality of the fine, and demanded the trial promised the night before to the consular corps and to the several members of the foreign colony, which was refused and threatening replies only received.

Eleventh. That your memorialist, convinced of the arbitrary and brutal proceedings which were evidently to be employed to compel payment, it was suggested that the amount of the fine (although entirely unauthorized) be deducted from the balance due your memorialist's employer, the railroad company, from the Government for work done, but that was refused.

Twelfth. That on the morning of the 15th of June, 1885, your memorialist was informed that by order of the prefect your memorialist could not be allowed either food or water, and that every article of furniture be removed from his cell, which order was forthwith carried out, such cell being a damp one with a brick floor, and your memorialist was compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away.

Thirteenth. That it being impossible to exist without food or drink—thanks to some of the commercial houses of the city of Arequipa—the money was raised, to wit, the sum of 10,000 soles, and paid, and at 3 o'clock in the afternoon your memorialist was allowed to go at liberty.

Fourteenth. That in view of and in consequence of the foregoing recital of acts of indignity, barbarity, and illegality, your memorialist lost no time in making protest before Hon. Alex. Hartley, acting British vice-consul, at the British vice-consulate, on the 16th day of June, 1885, against the arbitrary, abusive, and barbarous proceeding of the aforesaid prefect of Arequipa, Col. Don Manuel San Roman, declaring that the 10,000 soles in silver were paid under pressure and threats of violence, reserving the right to make claim to a higher authority, and to appeal to diplomatic means, if necessary, in defense of his rights, and that the first use made of his liberty was to enter such protest at the British vice-consulate, as aforesaid.

Fifteenth. That such protest was by your memorialist promptly forwarded to the United States legation at Lima, Peru, with the following certificate attached:

"Thus presented and declared in due form of law, at Arequipa, aforesaid, the day, month, and year first above written.

"ALEX. HARTLEY,  
"Acting British Vice-Consul."

Sixteenth. That the said prefect on the 8th day of December, 1886, solicited the approval of his proceeding against your memorialist by the Peruvian Government, when, without either notice to or hearing of your memorialist, the Peruvian Government proceeded, under date of December 15, 1886, to approve and did approve of the said action of the said prefect, Col. Don Manuel San Roman, in the matter of which your memorialist was informed by official note dated the 22d day of December, 1886.

Seventeenth. That since the 13th day of June last (1888) your memorialist was again made the victim of Peruvian persecution by the authorities of Arequipa, Peru, confined and imprisoned in his own office for five days, so confined for twenty-seven hours without food or water, for the purpose of forcing your memorialist to pay the amount of \$3,000 for taxes levied on the railways by the authorities, although your memorialist was neither stockholder nor director in the said railway company, while his connection with it had ceased some time before; and of which oppression and barbarous treatment your memorialist made complaint, and of such abusive proceedings he protested before the English minister; and for all of which abuse, maltreatment, and persecution your memorialist makes complaint to you, the high official of his Government; and in such connection asks that reparation be demanded by the Government of the United States of the Peruvian Government, and your memorialist's claim of \$200,000 indemnity for the treatment herein complained of be promptly prosecuted.

And he will ever pray.

VICTOR H. MACCORD,  
By S. NEWTON PETTIS,  
*His attorney, No. 302 Chestnut street, Meadville, Pa.*

COMMONWEALTH OF PENNSYLVANIA, *Crawford County, ss:*

Mrs. Sarah Ann Allen, formerly Mrs. Dr. MacCord, being sworn, says that she was born on the 11th day of February, 1819, near Meadville, Crawford County, Pa.; that she is now a resident of Linesville, in the county aforesaid, and was in 1885; that Victor Hugo MacCord, now sojourning at Arequipa, Peru, in South America, is her son, and was born in the Commonwealth of Pennsylvania on the 18th day of January, 1842; that she has read the foregoing memorial of Victor Hugo MacCord addressed to the Honorable T. F. Bayard, and that the facts therein set forth are correct and true, as she verily believes, and that her said son, Victor Hugo MacCord, informed this affiant, when at home with her in 1883, that he intended to settle up his business and return home, and that he expected to accomplish that in a couple of years, and return to his home in Pennsylvania.

SARAH ANN ALLEN.

Sworn and subscribed before me, a notary public, September 17, 1888.

[SEAL.]

WILL S. ROSE, *Notary Public.*

COMMONWEALTH OF PENNSYLVANIA, *Crawford County, ss:*

Mrs. Mary Ada Gehr, being duly sworn, saith that she is the daughter by Mrs. Sarah Ann Allen, and was born May 27, 1862, at Espyville, in Crawford County, State of Pennsylvania, and that she has read the memorial of her brother, Victor Hugo MacCord, and believes that the statements therein contained are correct and true, and concurs with the statements of her mother with reference to the statements made by her brother in 1883, while at home, concerning his return to his home in Pennsylvania so soon as he could settle his affairs in South America.

MRS. MARY ADA GEHR.

Sworn and subscribed before me, a notary public, September 17, 1888.

[SEAL.]

WILL S. ROSE, *Notary Public.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 2, 3, 4.)

*Mr. Adee to Mr. Pettis.*

DEPARTMENT OF STATE,  
Washington, October 9, 1888.

SIR: I have received your letter of the 2d instant inclosing a memorial in the case of Mr. V. H. MacCord against the Government of Peru.

A copy has been sent to our minister at Lima, who is giving the case his attention.

I am, etc.,

ALVEY A. ADEE,  
Second Assistant Secretary.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, p. 19.)

Under date of September 3, 1888, Mr. Buck replied to Mr. Alzamora as follows:

*Mr. Buck to the Minister of Foreign Relations.*

No. 112.]

LEGATION OF THE UNITED STATES,  
Lima, September 3, 1888.

MR. MINISTER: In my interview of Friday last, in which references were made to my note No. 110, of August 6, 1888, and foreign office note No. 30, of August 28, 1888, in reply, relative to the outrages perpetrated upon Mr. Victor H. MacCord in June of 1885, under the orders of Señor San Roman, then in military command at Arequipa, your excellency indicated that it was desirable to have the reasons for the delay of Mr. MacCord in presenting his case stated in the form of a note to the foreign office.

In response it is to be observed, as I stated at that time, that there is no such thing as a bar by limitation of time affecting diplomatic rights; and, as a better expression of this view, I may quote from a dispatch of the State Department touching this subject in our relations with Chile as far back as 1844, in which the Secretary pertinently wrote:

"There is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed to be always ready to do justice, and whether a claim be a day or a century old, so that it is well founded, every principle of natural equity, of sound morals, requires it to be paid."

While, therefore, I apprehend judgment upon the question of delay in this matter is solely within the discretion of the United States Government, and the announcement that the reasons therefor have appeared satisfactory to it should be conclusive upon that point, still, as an evidence of disposition to meet your excellency's wishes as far as possible, I present the following statement and views thereon, suggested by your excellency's request and verbal expressions, made in the said interview.

Stated in brief, the facts appear substantially these: On June 11, 1885, the prefect of Arequipa, Colonel San Roman, then commanding the "Cacerist forces" in that section, who, according to your excellency's note, was in insurrection against the Government at Lima recognized by foreign powers, the United States included, made requisition on Mr. MacCord, the general manager of the southern railroads, in the employment of the concessionaire, Mr. J. L. Thorndike, for an engine and train of cars to convey troops to a point on the Mollendo division of the road, placing the train under the command of Sergeant-Major Valdez. While in charge of said officer the engineer detached the engine and made off with it to Mollendo, then in possession of the Iglesias forces.

Although Mr. MacCord was in no way responsible for this occurrence, it having resulted from the treachery of the engineer and the carelessness of the guard, he was thrown into prison and threatened by the prefect that if use was made of the runaway engine he would be shot. Thereafter he was placed before a file of soldiers and asked if he wished to say anything, and told that he was about to be shot. But after conference among the officers he was remanded to prison and ordered to pay a fine of 10,000 soles. Declining to do this, he was deprived of food and drink and left standing in a damp cell without furniture—even a stone which he had used as a seat being removed. Finally, after protest of the foreign residents of the city, headed by the consular corps, made in vain against the outrage, some commercial houses of the city raised the funds with which the fine was paid, and Mr. MacCord was then released; whereupon he immediately made protest on June 16, 1885, before Her Britannic Majesty's vice-consul, copy of which protest has been supplied the foreign office with my No. 110, of August 6, 1888.

At the time, and until recently, Mr. MacCord was in the employment of Mr. John L. Thorndike, as manager of the said railroads. Therefore, in deference to the interests and discretion of Mr. Thorndike, in view of his relations to the Peruvian Government as concessionaire of the said railroads, which it seems Mr. MacCord felt

obligated to regard while himself Mr. Thorndike's employee in superintendence of said roads, he, Mr. MacCord, delayed presenting the matter to his Government until a change of circumstances relieved him from such considerations. When I add that the foregoing circumstances had been fully submitted to and considered by the United States Government before it instructed this legation to present the matter to your excellency, there only remains, I think, one more objection to your excellency to answer—that is, the assertion that as Señor San Roman was a chief in insurrection against the Government of Peru recognized by foreign powers, the United States included, your excellency's Government is not responsible diplomatically in premises, and that Mr. MacCord's only course, if his allegations are true, is to prosecute judicially the said San Roman upon a personal responsibility for his acts.

Your excellency, as a reason for this position, said (1) that there existed a law in Peru that the Government could not be held responsible for any acts committed by insurgents or revolutionists, and foreigners were tacitly accepted into the country under that condition; (2) that, according to universally admitted international law, a government could not be held responsible for mob or insurrectionary violence.

Concerning the first point, I apprehend that the only force such local law as that to which your excellency refers can have so far as affecting diplomatic relations is to establish at the outset that there is no adequate judicial remedy in Peru for claimant, since such local law bars recourse against the Government through the courts; consequently direct diplomatic intervention offers the only means open to Mr. MacCord as an adequate "remedy" for a manifest and notorious tort.

On the other hand, I may call attention to the fact that, so far from being in the country solely subject to the conditions of the local law referred to by your excellency, Mr. MacCord was here not only under the larger principles of international law, but under the incontrovertible guarantees of a treaty then existing between the United States and Peru, article 16 of which declared: "The high contracting parties promise to give full and perfect protection to the persons and property of the citizens of each other, of all classes." Again, in the said treaty of 1870, it was declared, the citizens of either country, within the territory of the other, "shall not be liable to imprisonment without formal commitment under a warrant signed by legal authority, except in cases *flagrante delicto*, and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest; and if not so examined, the accused shall forthwith be discharged from custody." \* \* \* Also, "they shall not be called upon for any forced loan or extraordinary contribution for any military expedition, or for any public purpose whatever, nor shall they be liable to any embargo or be detained with their \* \* \* goods or effects without being allowed therefor a full and sufficient indemnification, which shall in all cases be agreed upon and paid in advance."

Since this treaty was in full force at time of the outrage, and until March 31, 1886, and as I have had occasion to remark in another case involving a like question, "was obligatory whether the state was that of war or peace, or whatever might be the circumstances of Peru during existence of the compact," the matter may probably appear as thus disposed of.

But concerning the general principle, even outside of treaty obligations—to illustrate how different has been the view of Peru at another time—I might refer your excellency to the correspondence between Mr. Seward and Mr. Barrada relative to the effort made by Peru to hold the United States Government responsible for the destruction of Peruvian property in 1862 on board a ship in Chesapeake Bay through the sudden attack of insurgents, notwithstanding the ship ventured into waters which were in the recognized limits of hostilities between the United States Government and the Southern States, at the time engaged not only in rebellion, but in one of the most fiercely contested and protracted wars of modern times, so formidable in its nature that not only foreign nations, but the United States Government itself, virtually conceded to the rebellious States, which had a distinct geographical as well as political autonomy, "belligerent rights."

Although, of course, such a contention on the part of Peru could not, under the circumstances, be sustained, still the incident is instructive as indicating, when Peruvians have been the sufferers, how widely the ideas of the foreign office have diverged from those now expressed by your excellency.

Here, too, I may refer to Note 95, of August 31, 1878, of Mr. Gibbs to Dr. Manuel Yrigoyen, then minister of foreign relations of Peru, in a claim growing out of mob violence, in which allusion is made to the Spanish claims for losses, etc., caused by mobs in New Orleans and Key West in 1851, which were paid by the United States Government, of which I have made mention in the course of conversation with your excellency.

Under date of June 20, 1834, Mr. McLane, Secretary of State, wrote concerning a contention of Mexico, similar to that made by your excellency:

"The mere revolutionary state of a part of Mexico can not be accepted by the United States as a defense to a claim on Mexico for injuries inflicted on citizens of the United States in Mexico in violation of treaty engagements."

I may also quote the language of Mr. Fish, Secretary of State, to Mr. Foster in Mexico, dated August 15, 1875, as follows:

"If a country receives strangers within its limits, it thereby incurs a liability to protect them from violence, not only on the part of its own authorities, but ordinarily also from violence on the part of insurgents. This latter ground of liability may be regarded as continuing at least until the government of a neutral country whose citizens may be aggrieved in the course of the hostilities shall recognize the insurgents as entitled to belligerent rights."

I need hardly remind your excellency, so far as known, there had been no concession of belligerent rights to the revolutionary Government to which pertained "Señor San Roman" when the outrages were perpetrated on Mr. MacCord, either by the Government of Peru, recognized at the time by foreign countries, or by any foreign nation diplomatically represented in this capital.

In conversation your excellency asked me, as though the question itself involved a refutation of the idea of national responsibility for the acts of the said "Señor San Roman," would not the United States Government have indignantly rejected a claim made against it for the acts of the Government of Jefferson Davis? To which I replied that I should have to know the character of such claim in order to properly answer your excellency. But, perhaps, in general terms I had better let the words of the State Department stand for themselves on this point:

Those from the Secretary of State to Mr. Foster, dated December 16, 1873, are:

"It is true that this Government has not confessed its liability for the injuries to foreigners by persons claiming authority in the South during the rebellion. The reason for this disavowal is believed to be belligerent rights had tacitly, at least, been granted to the insurgents, not only by this Government but by those of the principal European nations. This is a concession which may be allowed to carry with it an acknowledgment that the party in whose favor it may be made is both competent and willing to do justice to the citizens or subjects of the grantor, and, indeed, may of itself be allowed to exempt the other party from such accountability \* \* \* the foreigners who were so injured are citizens or subjects of countries who acknowledge the insurgents as belligerents."

But whatever may be the different opinions as to the general international rule concerning responsibility or nonresponsibility of a government for revolutionary violation of personal and property rights of neutrals, and whatever its limitations or qualifications, this case in reality involves other reasons that place it upon more elevated grounds of equity, the irresistible force of which, I think, will be apparent.

Your excellency has commented upon two distinct Governments existing in Peru at the time of the MacCord outrage; but it will be remembered that by the act which Generals Cáceres and Iglesias signed December 2, 1885, both Governments were, by their mutual consent, merged into the Provisional Government then established, of which the present Government, by popular and peaceable determination, made under the authority and administration of said Provisional Government, is the successor; so that whatever may have been the character of either the Iglesias or the Cáceres Government, by consent of each and of the people of Peru, given through the subsequent elections, the present constitutional Government reigns as the successor of both, and hence should be considered responsible for the acts committed by the officials, or under the authority of both, so far as they affect the interests of United States citizens.

Mr. Gallatin wrote, February 11, 1824, to Mr. Pierce:

"The doctrine that the present Government of France is not responsible for any injuries committed against the Americans by that of Bonaparte is so contrary to the acknowledged law of nations \* \* \* that it is not probable that it will be officially sustained."

And President Jackson stated in his message, 1835:

"The defense to a diplomatic appeal for redress for spoliation that the wrong was done by a former sovereign who was a usurper is unfounded in any principle in the law of nations, and now universally abandoned, even by those powers on whom the responsibility for acts of past rulers bore most heavily."

The "French spoliation claims" were, it may be remembered, therefore finally settled by France.

I might add that upon dissolution of the Colombian Confederacy the United States Government, in 1839, informed its members that it would hold them jointly and severally liable for our claims. That case was simply inverse to this—in Colombia there was dissolution and in Peru there was consolidation of powers, perhaps making this case, therefore, the stronger upon principle.

In June, 1885, General Cáceres was the head of one of the contending governments in Peru, neither of which exercised supreme control over the whole of the national territory. But after mutual arrangement, as above referred to, under the act of December 3, 1885, on the 3d of June, 1886, General Cáceres, to whose government Colonel San Roman had pertained in his occupancy of Arequipa, was installed as the constitutional President of the Republic. This was done after due ascertain-

ment of the popular will, and by the proclamation of the Peruvian Congress, assembled, as stated by the Provisional Government, in fulfillment of the arrangement of December, 1885, made between Generals Cáceres and Inglesias.

The outrages perpetrated against Mr. MacCord in June, 1885, were of general notoriety at the time, and of such a character as excited general indignation among foreign residents in Arequipa to an extent that elicited their united action in remonstrance and in a demand for legal trial, which, in violation of treaty and legal guaranties, was not accorded; nor was Mr. MacCord released until the money was raised and paid to the said Colonel San Roman, exercising authority under the government of General Cáceres, to the benefit of which the funds so paid accrued, in the defense of the cause of General Cáceres, and in resisting the "Lima Government."

The above circumstances are believed to be of public notoriety, and at least in the main undeniable, but they are referred to subject to correction in any details if not accurately stated.

I may quote as pertinent to the imposition placed upon Mr. MacCord language used relative to other acts of a similar kind in behalf of the same political partisans, and about the same time, viz, the seizure of certain guano at Mollendo appearing to belong to United States citizens, which is equally applicable here. "It was appropriated to sustain a cause which has become national by the voluntary action of the people of Peru, its chief representative being at the present time the duly elected constitutional executive of the Republic"—with this difference, the seizure of the guano was not, it seems, accompanied by acts of personal violence and cruelty.

Moreover, this same San Roman was retained as prefect of Arequipa, first by the Provisional Government of the council of ministers, and then by that of the present Government; and not only so, but the same "Señor San Roman," upon the expiration of a two years' term as such prefect under the present administration of General Cáceres, has been recently reappointed to the same office, with an official statement that his services have been satisfactory to the Government of Peru.

Thus the responsibility of your excellency's Government for the said acts of Prefect San Roman not only seems fixed by the arrangement of December 2, 1885, and the triumphant succession, in pursuance of it, of General Cáceres to the chief executiveship, but that responsibility seems still further emphasized by the consecutive reappointment of Colonel San Roman to the same post in which the outrages were perpetrated on Mr. MacCord, and by the public official approval of his acts in the decree making the reappointment dated August 11, 1888.

Trusting that your excellency will, with this fuller presentation, recognize the justice of the observations, respectfully presented, I avail, etc.,

CHAS. W. BUCK.

[Postscript.]

SEPTEMBER 11, 1888.

SIR: Since writing the above I have just received your No. 224, of August 14, inclosing copy of letter from Hon. S. N. Pettis, and copy of protest "touching alleged outrage" on Mr. V. H. MacCord.

Before writing that dispatch Department had been fully advised in this matter, and furnished copy of Mr. MacCord's said protest, with my No. 366, of May 24 last, as shown by its instruction No. 208, of June 23, 1888.

Your obedient servant,

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 14, 15, 16, 17.)

*Mr. Alzamora to Mr. Buck.*

No. 34.] MINISTRY OF FOREIGN RELATIONS OF THE REPUBLIC OF PERU,  
Lima, November 6, 1888.

MR. MINISTER: The necessity, firstly, of obtaining certain information, and, secondly, the urgent and deep occupations of the Government during the last few days, have not allowed me to give attention to your excellency's dispatch of the 13th (3) September, No. 112, relative to the claim of Mr. Victor H. MacCord, growing out of the collection of a fine of 1,000 soles imposed in June, 1885, by the prefect of Arequipa.

Your excellency begins by demonstrating that in the course of diplomatic claims there is no prescription, supposing that my Government places in doubt this abstract principle; but the circumstance of my calling your excellency's attention to MacCord having permitted so long a lapse of time before asking your excellency's intervention, without hindrance in doing so, has no such meaning.

Said circumstance involves such gravity that your excellency has thought necessary to express the reasons why MacCord has abstained until now from making any claim, and my Government finds in such explanations, thankfully acknowledged, much light in forming an exact opinion upon the claim which is the subject of this note.

Further light is obtained through the information to which I made reference at first, and which my Government has collected in order to be acquainted with the whole matter, notwithstanding the reasons for declining, *prima facie*, all responsibility, as shown in my dispatch of August last.

My Government sustains in general said reasons, notwithstanding your excellency's exposition, and insists on the principle that it is not responsible for revolutionary acts, nor for the damages occasioned as the inevitable effect of operations of war, even if done by its own forces; but it has reasons to consider in the present case the fine imposed by Prefect San Roman as emanating from legitimate authority, as it frankly so declares, and for this reason it has resolved to study the case of MacCord, at the same time that it puts aside from the discussion the mentioned principles that have no application in the present case.

From MacCord's protest, as well as your excellency's explanations, kindly transmitted in the dispatch which I answer, and the information obtained by this office, it appears that the fine was not imposed on MacCord individually, but on the railroad of which he was the representative.

I find in MacCord's protest the following words:

"Convinced of the arbitrary proceedings that undoubtedly would be employed to enforce the fine, a proposition was made to deduct it from the amount the Government owed to the railway for work done."

And afterwards, alluding to the necessity he had of borrowing money to pay the fine, he says:

"That in consequence of the almost complete stoppage of traffic during the past year, owing to political disturbances, the railway company had not earned enough even to pay its workmen."

According to the explanations contained in your excellency's dispatch, which I answer, MacCord had not formulated his protest until the present because he was an employee of Mr. Thorndike, as administrator of the railways, and deference toward said gentleman, and consideration for his claims pending against the Peruvian Government, led him (Mr. MacCord) to believe that he should await a change of circumstances which should free him from such considerations.

Finally, through the information collected by this office, it appears that the fine was caused by the railroad represented by MacCord having placed itself in accord with Col. Garcia y Garcia, who left the cars at Mollendo in an expedition against Arequipa, then defended by Prefect San Roman, and deliberately leaving at Mollendo, or at its neighboring stations, cars and wagons enough to transport the attacking forces, notwithstanding the imperative orders that had been communicated to him beforehand; and, finally, that he changed the driver of an engine that Prefect San Roman had ordered out, in order to carry out the plan of escaping, and handing it over to Col. Garcia y Garcia's troops, thus enabling them to cross the desert that separated them from Arequipa.

I have likewise ascertained that the fine was not imposed upon Mr. Victor H. MacCord personally, but upon the railroad company; that said company paid it, charging it in the books that MacCord still keeps, having deducted afterwards the amount from the salaries of the Peruvian employees.

I believe it unnecessary, Mr. Minister, to make reflections on the foregoing facts, in order to satisfy your excellency that MacCord's claim has no just foundation, and consequently I have the assurance that your excellency will not find it strange that my Government, after taking it in serious consideration, should maintain that it can not be admitted.

I renew, etc.,

ISAAC ALZAMORA.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 23, 24.)

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[Mr. Buck in reply.]

*Mr. Buck to Minister of Foreign Relations.*

No. 120.]

LEGATION OF THE UNITED STATES,  
Lima, November 14, 1888.

MR. MINISTER: I have received your excellency's note dated the 6th instant, and replying I may first rectify its error as to the amount of the imposition placed upon Mr. MacCord in June, 1885. It was not 1,000, but 10,000 soles, as shown in the copy of Mr. MacCord's protest accompanying my No. 110, of 6th August last, to the foreign office.

The two points of defense adopted in your excellency's preceding note (No. 34, of November 6, 1888) were:

1. The delay in presenting the claim; and
2. That the acts complained of, if committed, were those of an insurrectionary or revolutionary commander, for which the Government of Peru could not be responsible, and which induced the conclusion on its part that Mr. MacCord's only recourse was against the said San Roman as an individual wrongdoer. Your excellency concluded from these considerations that the claim was not admissible as a diplomatic one, and therefore the Peruvian Government could not even examine into it. These views occasioned the presentation of principles involved, as set forth in my No. 112 of September 3 last.

I now observe your excellency states that the objections made on account of delay do not reach to the point of prescription, but that such delay was a grave circumstance which required explanation; and while your excellency holds that the Peruvian Government maintains in general, notwithstanding the exposition of principles presented by this legation, that it is not responsible for acts of revolutionists, nor for damages caused even by its own forces as the inevitable effect of the operations of war, yet it has reasons to consider, in the present case, that the fine imposed by the prefect, San Roman, emanated from a legitimate authority, as it "frankly declares," and so had decided to enter upon a study of the case of MacCord; at the same time putting to one side discussion of the before-indicated principles, which your excellency believes do not apply to the facts as alleged now on behalf of the Peruvian Government.

Perhaps the tardiness of this admission, however now "frankly declared," was due to noninvestigation of the facts in this case, relative to which the foreign office note of August 28 last stated your excellency's Government had no information, etc. This supposition seems more pertinent in view of advices which I have just now received, that the said prefect, San Roman, on December 8, 1886, solicited approval of his proceedings referred to against Mr. MacCord, which the Government granted without even notice to or a hearing from him, under date of December 15, 1886, of which Mr. MacCord was informed by official note dated December 22, 1886. Presumably the proper office of your excellency's Government has a record of the correspondence, so that if this information, received since my last note on the subject, is in any way faulty, your excellency can indicate where it is so.

Had this been known at the date of my note of September 3 last it might have avoided the necessity for reference to some circumstances therein presented, as it was your excellency's former line of defense that also induced the discussion of principles in my said note, as hereinbefore stated.

At any rate, since your excellency has apparently abandoned the position taken in your excellency's former note relative to the Government's nonresponsibility because of the said Colonel San Roman's therein alleged revolutionary character, I conceive there remains now no question as to the responsibility of the Peruvian Government for the indicated acts, according as their true nature may be demonstrated.

The facts your excellency alleges to be: That the railroad enterprise represented by Mr. MacCord placed itself in harmony with Col. Garcia y Garcia, the Iglesias commander in charge of the expedition which landed at Mollendo for the purpose of opposing itself to those of the said Colonel San Roman at Arequipa; that Mr. MacCord, contrary to the said Colonel San Roman's orders, left sufficient cars for the transportation of the Iglesias expedition from Mollendo to Arequipa, and afterwards changed the engineer of one locomotive which Colonel San Roman had ordered for the service of his forces, in order to realize a plan of escape, as it did escape to the forces of the said Col. Garcia y Garcia, thus enabling the latter to pass over the desert which separated his forces from Arequipa; and, finally, that the fine was not imposed on Mr. MacCord personally, but upon the enterprise (empresa), which paid it and entered it in books which Mr. MacCord conceals or retains, having discounted afterwards its value from the salaries of Peruvian employees.

As to these allegations made by your excellency's Government, it would seem for the present, at least, only necessary to note that, as this is the assertion of "new matter," it is incumbent upon the Peruvian Government to prove what is asserted—since in such state of the case the maxim "*onus probandi incumbit qui decit non qui negat*" applies; and until the evidences are presented, which presentation your excellency's Government has not yet made to this legation, it would seem unnecessary to consider what importance, if any, attaches to the allegations—as until presentation of proofs it is impossible to examine their relevancy or scope. Therefore, with such lights as this legation has upon the matters, it seems impossible to admit the said allegations on the part of Peru as an explanation justifying the acts complained of; and especially is this the case when it is noted that your excellency is pleased to treat the matter as though recovery of the fine ("*multa*") is the sole question involved, whereas that is only one feature of it, and by no means, as I conceive, the totality, or even the determining circumstance, affecting Mr. MacCord's rights.

However, as to the fine of ten (not one, as stated by your excellency) thousand soles, I do not understand that your excellency claims, as I apprehend it can not be claimed, that it was imposed under existing laws, or in a legal way, or by judicial or proper process. Nor do I understand that the laws of Peru (though I express my ideas, if in error as to them, subject to correction by those better versed than I am in them) admit that a mere employee can be imprisoned and tortured, and even confronted with execution, in order to enforce the payment of a fine imposed confessedly not upon himself personally, but upon the company or enterprise (empresa) which he may represent.

But whatever may be the Peruvian law generally applicable to such state of case as is alleged by your excellency's government, it could not apply here, because there was a higher law in force at the time, so far as United States citizens or their interests were concerned, in the shape of an existing treaty.

To the relevant provisions of that treaty I observe your excellency makes no reference, although I called attention to its very pertinent guarantees in my previous said note of September 3 last. Neither does your excellency refer to the important additional evidence presented with my note No. 119, of the 31st ultimo, in which the various consular officers at Arequipa, with numerous other residents and persons acquainted with the facts in this case, testify to the correctness of the allegations of Mr. MacCord's protest, presented, as stated, with my No. 112, of September 3, to the foreign office, which allegations do not agree with the views expressed in your excellency's note of the 6th instant, at least so far as that note charges complicity upon Mr. MacCord in the attempt of the Iglesias forces, and in purposely leaving cars within the reach of, and running off an engine to, those expeditionary forces under Col. Garcia y Garcia.

It not only appears from the protest of Mr. MacCord (which was not made recently, as your excellency assumes, but on June 16, 1885, immediately after the event, as will be seen from its date, though only officially presented to this legation some months ago for the reasons explained), but over the attesting names of the thirty-nine consular officers and others signed to the certificate, copy of which has been, as before mentioned, sent to the foreign office, that, in plain violation of said treaty provisions, without legal writ of process, Mr. MacCord was committed to imprisonment on June 12, 1885, and, without legal or judicial examination, he was continued in prison until 3 o'clock p. m. of June 15, 1885; and not only was he so committed to prison and detained for more than twenty-four hours without examination or trial, in violation of treaty guarantees, but was, in still worse violation of treaty obligations, during such illegal imprisonment, tortured with inhuman treatment, and even confronted with threatened execution; and was only thereafter released upon payment of an illegally and violently imposed fine of ten (not one) thousand soles. These facts alleged by Mr. MacCord, and proved before the English vice-consul over his signature, and those of the said some thirty-nine consular officers and other persons in Arequipa, I do not understand your excellency to controvert.

The same signatures attest that "the running away of the engine was due to the perfidy of the engineer and the carelessness of the officer and troops placed in charge of it by the said Colonel San Roman," "there being absolutely no blame attachable to any employee of the railroad except the engineer who ran away."

The statement of said protest and numerously signed certificate, quite contrary then to the views expressed by your excellency, seem to show that Mr. MacCord was not responsible for the flight of the engineer with the locomotive to the Iglesias forces, but that circumstance resulted from the negligence or fault of Colonel San Roman's own forces that had been placed in charge of said locomotive.

But even if the question of the fine be put to one side for the present, which, however, I can not admit can be done, over and above that remains, apparently uncontroverted, the wrong and violence committed against Mr. MacCord's person in disregard of all right, and, as I understand, of Peruvian laws themselves, and in plain violation of treaty guarantees; hence, whether the fine was imposed on him personally or upon him as the representative of the railroad, and whether or not charged on the railroad's books and afterwards discounted, Mr. MacCord has independently his claim against the Government of Peru for proper reparation as to the wrongs committed against himself.

In conclusion, I must therefore again refer your excellency to the treaty provisions then—viz, in June, 1885—in full force, as cited in my preceding note of September 3 last, in this case, one of which guarantees I beg to emphasize and to impress upon your excellency's attention by placing its language in juxtaposition to the facts and considerations that precede, which, found in article 15, reads:

"The said citizens shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases flagranti delicti, and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest; and if not so examined, the accused shall forthwith be discharged from custody. Said citizens, when detained

in prison, shall be treated during their imprisonment with humanity, and no unnecessary severity shall be exercised toward them."

I have just received from the Department of State at Washington a copy of Mr. MacCord's memorial to his own Government, in which he states his claim for indemnity against that of Peru, for treatment complained of, at \$200,000.

I reiterate, etc.,

CHAS. W. BUCK.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 24, 25, 26.)

*Mr. MacCord to Mr. Buck.*

AREQUIPA, November 15, 1888.

DEAR SIR: Your esteemed favor, dated 9th instant, is at hand. In reply I beg to state that I have never pretended that the fine was paid by me; it was paid by Mr. Thorndike, and the statement that it was afterwards discounted from Peruvian employees, or any others, is entirely false. Neither do I make claim for the fine; my claim is for the unlawful, barbarous, and inhuman treatment to which I was subjected to compel the payment of the fine. For this I have asked a money indemnity of \$200,000 or such other as the Government of my country may consider a proper recompense for the sufferings and indignities inflicted upon me, such as being confined in a cell without either food or water or any article of furniture allowed me; being led out at night and stood up before a file of armed soldiers to be shot, etc., as detailed in my protest, and certified to by the whole community of Arequipa.

I deny that any responsibility for the escape of the engine can in justice be attributed to me. The train was put under the charge of the officer designated by the prefect in his note dated June 10 (which original, with signature certified to, has been sent to you), and an armed guard was by him placed in the engine. But in any case I claim, and did demand at the time, that an investigation should be made as to the facts of the case in order to demonstrate the truth and fix the responsibility where it properly belonged. Had this been done I could not have complained; but it was never done, and there are people here who think it would not suit the Government to do it, as it might be shown that their own officers were implicated. Be this as it may, it should be borne in mind that my claim is not for the fine imposed on the railway, but for the arbitrary, illegal, and outrageous treatment to which I was subjected in connection with it, and the refusal or failure to grant me trial or hearing in accordance with the laws of the country.

The statement that I was "in accord with the Iglesias commander" is false and can not be substantiated. I never had any communication, either directly or indirectly, with any person engaged in or connected with the expedition. In regard to the cars left on the road, I disclaim any responsibility for it. The prefect gave an order to bring away the only engine remaining in Mollendo, and with it all the cars remaining there, and which had been kept there, with his consent, as necessary to do the work; and on no account to permit an engine to go out from here except by his order. This order (to bring away the cars) was delivered to Mr. Braun, the general manager, who was here at that time, and as it was utterly impossible to bring up all the cars with one engine, Mr. Braun went personally to the prefect's house to explain and consult the matter with him. The prefect would listen to no proposal for sending more engines to bring away the cars, and declared that he had given orders to burn all that were left on the road by the engine coming up. We could, therefore, do nothing more in the matter, and the responsibility rested with the prefect.

As to my having changed the engineer on the runaway engine, this is also false. The circumstances were as follows: The prefect specified a certain engine, and that engine had just come in, having been out all night on the same kind of service; and when the engineer complained to the master mechanic that he had had no sleep the previous night, and could not stand it another night without sleep, that chief named another engineer to go along for the purpose of watching the engine at night in case they should be kept out. With this I personally had nothing to do, but did approve when advised of it, as I had not a suspicion that we had among the engineers a single one who would be capable of running away with an engine, even if no guard had been kept on them, as was the invariable custom at the time. How the guard came to leave the engine and thus allow of its being taken away has not, so far as I am aware, ever been inquired into; but I certainly do not, and did not at the time, consider that the responsibility rested upon us to prevent such a thing happening. I gave the train into the possession of the officer and charged the conductor and engineer to be careful not to fall into the hands of the opposing forces by any act of their own, and to that end I cautioned the conductor not to allow himself to be sep-

arated from the said officer under any circumstances; but I never thought it necessary to caution anybody against running away with the train or engine, much less the latter with a guard of soldiers on it.

In conclusion, I do not think the question of the fine needs to be taken into account. What I ask for is redress for not having been treated according to the laws of the country; and the investigations they are pretending to make now would have been more in order in June, 1885; nevertheless, I am perfectly willing to have them made now and to abide by the result.

Yours, respectfully,

V. H. MACCORD.

(See Ex. Doc. No. 4, Fifty-third Congress, third session, pp. 26, 27.)

By further reference to the papers and correspondence transmitted to the Senate by the Secretary of State (Ex. Doc. No. 18, Fifty-third Congress, third session, p. 5) it appears that subsequent to the filing of MacCord's memorial touching the brutal treatment measured to MacCord in June, 1885, renewed indignity was offered to him, and insult to the national flag, as will be seen below:

In the matter of the memorial of Victor H. MacCord, a citizen of the United States, now sojourning at Arequipa, Peru, South America, addressed to the Honorable Thomas F. Bayard, Secretary of State of the United States.

*Affidavit of Mrs. Sarah A. (MacCord) Allen, residing at Louisville, Crawford County, Pa.*

CRAWFORD COUNTY, ss:

Mrs. Sarah Allen, being sworn, says that she is the mother of Victor H. MacCord above named, now sojourning in Arequipa, Peru, South America, and has been shown a letter from her son under date of October 4, 1888, addressed to S. Newton Pettis, of Meadville, Pa., in which the following appears:

"As I wrote you in my last, Mr. Thorndyke's house in Mollendo, in which was established the United States consular agency, was taken forcible possession of with armed soldiers on the 20th, and the consulate closed and the shield taken down. The minister in Lima claimed and the Government offered him to return the house immediately, which, however, has not been done up to this time, although I have called almost daily, in reply to inquiries by cable, that nothing has been or is being done toward returning the house. Meanwhile the consulate remains closed to the agent, and no business can be transacted by him."

That her son, she is informed and believes, is and for some time past has been the acknowledged consular agent of the United States in Peru, South America; and further saith not.

Sworn to and subscribed before me January 24, 1889.

SARAH A. ALLEN.

WM. PENTZ, *Alderman.*

JANUARY 31, 1889.

I hereby certify that William Pentz, before whom the foregoing affidavit was sworn to, is a duly acting alderman in and for the city of Meadville, in the county of Crawford and State of Pennsylvania.

S. NEWTON PETTIS,  
*Solicitor for V. H. MacCord.*

DEPARTMENT OF STATE,  
*Washington, February 13, 1889.*

SIR: I have to acknowledge the receipt of your letter of 31st ultimo relating to the alleged outrage on V. H. MacCord, an American citizen, in Peru, in 1885, to which your letter of August 2 last referred.

A copy of your letter has been sent to our minister at Lima, as supplementary to the statement made under your hand, sent him on 14th August last.

I am, etc.,

G. L. RIVES, *Assistant Secretary.*

L. NEWTON PETTIS, Esq.,  
*Washington, D. C.*

The committee present the foregoing as a full exhibit of the records of the State Department in this case, chronologically arranged, from the time of the alleged outrage against both the liberty and life of

Victor H. MacCord in June, 1885, then a consular agent of the United States in Peru, to February 13, 1889, less than three weeks before the change of the Administration of this Government on the 4th of March, 1889, and touching the true estimate of the character of Prefect San Roman, by whose order the outrages and crimes were committed against MacCord, in connection with his notorious and disgraceful administration while prefect of Arequipa in 1885, which is best disclosed by editorial notices in the Peruvian press of 1890, seen below:

[*El Comercio*, September 11, 1890.]

#### NUEVOS PREFECTOS (NEW PREFECTS).

The general, Don Manuel Velarde and Don Pedro Jose Rinz having renounced, Col. Don Manuel San Roman and Señor Manuel Elias have been nominated, respectively, to be prefect of Callao and Ayacucho, the first having been until this date prefect of Arequipa and the latter of Apurimac.

As interpreters of public opinion we can and must congratulate Government on the favorable change realized in the prefecture of Ayacucho—Señor Elias having all the required qualities for a high administrative functionary; but we can not say the same respecting the change made in the prefecture of Callao, where General Velarde, a prudent and highly esteemed functionary, by his renouncement has opened the way to Col. San Roman, against whom innumerable complaints have been lodged during the time he was prefect of Arequipa.

We fully comprehend that political necessities impose certain considerations impossible to avoid in many cases, and this explains, in our opinion, the nomination which favors Mr. San Roman; but at the same time it can only be deplored that a population like that of Callao, which have always distinguished themselves by their civic virtues, should be made the victims of such considerations.

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[Translation from the *Opinion Nacional*.]

LIMA, October 1, 1890.

#### RESIDENTIAL JUDGMENT.

Amongst the prefects recently nominated there are some who, as well on account of their antecedents as by force of law, can not fulfill the commission intrusted to them, and whose nomination the President of the Republic had better annul as soon as possible.

Col. Manuel San Roman, formerly prefect of Arequipa, and lately called to occupy the prefecture of Callao, after six years' service in his former place, is decidedly of the number of such prefects under responsibility. Besides many criminal lawsuits pending against him, and of which one of the most aggravating kind has been decided against him a few days ago by the supreme court, and besides being completely unable to be intrusted with such an important employment on account of his aggressive and reproachable acts, there is another question. According to law he must be submitted to a residential judgment, and during this time he can not have another commission of equal, and not even of less, elevation.

The residential judgment on employees who have been in command of a department or province is a requirement which can not be omitted without counteracting openly the law. The object of these judgments being to examine the behavior of such functionaries in order to ascertain if they are apt or not to be otherwise employed, and not to intrust a new place to those who have behaved badly in former occasions; all this would result delusive in the present case if Mr. San Roman was to take charge of the prefecture of Callao without having been previously submitted to the corresponding judgment of residency respecting his term of office as prefect of the department of Arequipa.

Article 22 of the law concerning the interior organization of the Republic says terminally: "The public functionaries cease de facto by the termination of one period, and the residential judgment will be effected, without which proceeding they can not be combined in the same charge nor be given another."

Mr. San Roman has been six years at the head of the prefecture of Arequipa. In this excessively prolonged term (exceeding twice the term stipulated by law) his misdeeds and abuses are known to the public; the press has denounced them frequently, and demand in high tones his punishment; private parties have accused him

before the competent tribunal, and there are still pending lawsuits against him. Nothing would be more logical, then, than to submit him to a residential judgment, before taking charge of the new prefecture, to examine the accusations which have been made against him and see if they are well founded or only show that there has been a bad feeling against him. When anybody is in charge of a commanding public position and will govern obediently to the laws, without listening to his personal affections or disaffections, he will surely not elude this definite legal prescription. It would indeed be the summit of arbitrariness to despise the law and to obey the inspirations of favoritism and individual condescendence. The prefects and all public functionaries in general are bound to account for their acts; they must prove to have executed the law during the time of their commission, and this can not be obtained unless they are submitted to a residential judgment, this being the only means to prove their good or bad behavior.

By prescinding from this judgment the natural consequence will be the impunity; the most abominable abuses of the authorities will be established as a rule for future conduct; social morals will be deeply affected, and the people will accustom themselves to regard their governors as the hangmen of their social privileges and of their immanent civic rights, instead of the natural protectors of their interests and guaranties.

If the acts of Mr. San Roman, committed in Arequipa, remain unpunished, what will he do, being prefect of Callao? Undoubtedly he will believe that by his abuses he will gain the esteem and good opinion of the chief of the state, and will consequently abuse as soon as he takes charge of that new situation, and will abuse still more than in Arequipa, because he can suppose that by so doing he will acquire a good right to occupy afterwards a still higher position in the political theater.

The recent electoral period is that in which Mr. San Roman has extralimited himself most. There was no guaranty which he has not trampled under his feet, nor any right which he has not violated—and all this against the terminant orders of the candidate he proposed to favor. In this sad period horrible crimes like that of Paucarpata were committed, and sufficient blood was shed; a great many citizens were debarred from voting in order to convert the election, the most august act of popular sovereignty, into a shameful mockery; hundreds of citizens were thrown into prison only because they proclaimed a candidate who did not enjoy the good will of the prefect, and, finally, the public force has been employed to fight party battles, ill treating and arresting all the dissenters from their official ideas.

And in spite of all, this abusive and rash prefect is elevated to a better prefecture, putting aside the residential judgment, of which law a ridiculous contempt is shown. This can not be accepted; it can not pass without noticing, unless we renounce the right of fiscalizing belonging to every citizen in the Republic to judge the acts of public men and to demand their submission to the sanction of law.

Mr. San Roman himself must ask for residential judgment in order to prove himself innocent in case he really thinks he is. He must not allow himself to be carried away by what he terms the passionate judgments of the press. If he is convinced that his acts being in authority were good and agreeable to law, he must from his free will invoke his vindication and ask for his judgment, in order to enable him to prove the sacrifice which he pretends to have made for the good of his country.

If he does not proceed in this manner, if he does not wish his acts to be assayed in the crucible of law, then he must confess the truth of all the inculpations which the press has registered, and confess that all the charges brought publicly forward against him are well founded; and then he must not accept the new prefecture given him, *because he does not merit to have it.*

It is high time to cast off this inconvenient silence, which has so often made us suffer abuses, in order not to give any pretense for disturbing public order. But now, when order is restored and nobody will reasonably fear any subversion, we must raise our voices to see the law obeyed and to expel from the public scene all those who never merited to be authorities and never will be good ones, because their habits do not allow it and their education is opposed to it.

Let us hope that Mr. San Roman, before taking charge of the prefecture of Callao, be submitted in Arequipa to the judgment of residency prescribed by law, and of which the Supreme Government can not dispense, because this is not in its power and attributions, nor does it belong to his constitutional privileges.

We are sorry to have been obliged to this frank severity, but the insinuations made to the Government for the best of its own prestige not having produced any effect it is necessary, at least, to leave a testimonial of the justice of our request.

We demand nothing but what the law commands—the residential judgment. (See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 14, 15.)

About the same time Mr. Buck wrote Mr. Pettis, in answer to a note addressed to him at Midway, Ky., touching this case, saying:

In reply to your note received this afternoon, inquiring as to the status of the MacCord case when I left Lima, I may say I think that my last note to the foreign

office was No. 120 of the foreign office series, and dated November last. That note was never answered, and I do not believe it can be answered. The new minister of foreign relations, just before I left, expressed to me regret that I was to leave so soon, and said he wished to settle the case, and asked me to make assurances of the good disposition of Peru in the matter to my Government upon my arrival; but upon my inquiry whether he would give shape to a basis of settlement, he said he was not prepared to do this, but would communicate to the Peruvian minister in Washington relative to the matter. Upon my return the State Department invited no consultation with me on the subject; so practically, as far as I know, the case stood, when I tendered my resignation on April 5 last, where my note of November 14 last, above cited, left it. I can only refer you to the Department for information as to said dispatch, which I observe is not published in the Foreign Relations for the last year, just out.

No action at all was taken by the State Department during the whole remaining portion of the year 1889, although the solicitor of Mr. MacCord was untiring and constant in his efforts to obtain consideration of the claim by the State Department, and failing therein, on December 24, 1889, presented to the President in person a clear, succinct, and yet elaborate résumé of the case, and six days thereafter was advised by Mr. Halford that the President directed him to say that he had read the statement left with him and that he would take occasion to confer with the Secretary of State on the subject.

Two years and a half afterwards, on September 17, 1891, Mr. MacCord's solicitor addressed a letter to the President, stating that he had not received, either from His Excellency or the State Department, any "information concerning the 'consideration' promised the last of December, 1889," and on September 23, 1891, received a letter from the President stating that he had received his (the solicitor's) letter of the 17th, in which his attention was called to the claim of Mr. Victor H. MacCord against the Peruvian Government, and that he had called the attention of the State Department to the claim, which was all he could do, as his time was too much occupied to give him the opportunity to take up the case and examine it upon its merits, adding that when Mr. Blaine returned his attention would be called to the matter.

The committee finds that Mr. MacCord was continually in communication with his solicitor, and was all the time advised of the action of the State Department down to March 4, 1889, and its nonaction after that date, and of its repeated refusals to hear or even see his attorney, and he subsequently approved of his solicitor's decision in the fall of 1891, to wait until a change of Administration took place, and for that reason declined to mention the matter of his claim to United States Minister Hicks while on a visit to Arequipa, several days' journey from the United States legation at Lima, who on his return trip volunteered a letter, given below, and which resulted in a correspondence that followed, which is given entire on pages 28 to 33, inclusive, Ex. Doc. No. 4, Fifty-third Congress, third session:

*Mr. Hicks to Mr. MacCord.*

*MOLLEND, September 21, 1891.*

SIR: I inclose herewith the documents left with me by Mr. Griffith. I have looked them through carefully and they only confirm my previous impression of the enormity of the outrage. Why the Department has not acted in the case I am unable to say; but whatever the delay may be, you can rest assured that the Department is influenced by principles of international law applicable to your case, and principles which would govern England or any other nation in a similar case. I will report the fact of my visit here to the Department and ask for a statement of the condition of the case, so that we may be enabled to judge something about the causes which prevent its successful prosecution. From the partial examination of the facts which I have been enabled to make, not having the necessary authorities at hand for consultation, I am inclined to think that it may have been presented to the Department as

coming under a class of cases growing out of a condition of war. In time of war subjects of a neutral nation caught between contending armies have little hope of redress, either for loss of liberty or of property, growing out of the legitimate prosecution of the war. This principle, as I understand it, is recognized by all civilized nations, and may possibly have a bearing in your case.

When I return to Lima I will look up the case as it appears in the records of the legation, and if I can learn anything which would be of interest to you I will communicate it to you at once. If I can be of any service to you at any time, in communicating with the Department or otherwise, you may be perfectly free to call on me.

Your obedient servant,

JOHN HICKS.

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*Mr. MacCord to Mr. Hicks.*

AREQUIPA, September 23, 1891.

DEAR SIR: I am greatly obliged to you for yours of the 21st instant, but I notice that you do not quite understand the nature of my complaint against the Government at Washington.

Had my case been given a hearing, and the Government have decided that there was no redress for the outrages committed, or that none had been committed, I should have undoubtedly thought it pretty hard lines, but would at the same time have accepted it as in accordance with international law and usages if so decided; but it has not been so, and what I complain of is that I can not get a hearing at all.

I do not want to bother you with the case, as I am convinced that it is useless to expect anything from the Government. Proof enough of this is the way the matter of the violation of the consulate at Mollendo was settled, and which caused my resignation of the consular agency there.

I can not, of course, pretend to discuss with you the point of whether the fact or circumstance of there being a revolution in the country at the time would or would not affect the case; but I will state that Mr. Gibbs, then minister of the United States in Bolivia, and a man of long experience as minister to foreign countries, assured me, when the circumstance of my imprisonment occurred, that the United States Government would immediately attend to the case, and that without doubt reparation would be demanded.

Not long ago two Americans were killed in Bolivia, and the fact that a revolution existed at the time did not prevent our minister taking up the matter, and going himself to the spot to investigate it; nor was it made a pretext by Bolivia for not punishing the criminals. Again, only very recently an American citizen was arbitrarily arrested and thrown into prison in Concepcion in Chile, on some frivolous pretext, and although a revolution or civil war was raging our minister demanded and secured immediate redress.

I repeat, that I am not inclined to do anything more in my own case. The time has gone by when a solution favorable to me would have had a good effect here; but I do feel hurt, and the pride which we all ought to feel in being citizens of such a glorious country is in me considerably humbled.

Thanking you for the interest taken in my behalf, and your kind offers in connection with the prosecution of my claim, I beg to subscribe myself,

Very respectfully, yours,

V. H. MACCORD.

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*Mr. Hicks to Mr. MacCord.*

LEGATION OF THE UNITED STATES,  
Lima, October 4, 1891.

SIR: I have the honor to acknowledge receipt of your esteemed favor of September 23d, which has had my careful attention. I have also given a partial examination of the case as it appears of record in this legation. From all I can learn through your letter, from the representations of your friends, and from the records, I am of the impression that you are laboring under a serious misapprehension, and that the delays and apparent neglect shown can be explained entirely to your satisfaction.

First, let me allude to your letter of the 23d ultimo.

In my letter of September 21 I alleged, as affording possibly some explanation of the delay or refusal of the Department to press the claim now, that "in time of war subjects of a neutral nation caught between contending armies have little hope of redress, either for loss of liberty or of property growing out of the legitimate prosecution of the war."

I made this statement as a conjecture, not as decisive of anything. In reply you allude to the case of Americans murdered in Bolivia, and state that the minister at once took up their case. I can only say that the Bolivian case is not at all like yours, as it appears to me, for the reason that it does not appear that the Americans were murdered "in the legitimate prosecution of the war," but simply by thieves or outlaws. The case of the American imprisoned at Concepcion, Chile, seems to be also of a different nature from yours, as the pretext does not appear to have any connection with the revolution.

Second. I was told by your friends that you had properly placed your case before this legation at once, to wit, in June, A. D. 1885, and that three different American ministers had allowed it to slumber without giving it the attention it deserved. I learn from the records that your case was first presented to this legation May 24, 1888, almost three years after the outrage. It was immediately taken up by Mr. Buck, and presented to the Department in several very strong dispatches on the subject. By order of the Department it was presented to the Peruvian Government by my predecessor, Mr. Buck, in an exceedingly forcible, eloquent, and elaborate statement and argument in your favor. In fact, since it was placed in Mr. Buck's hands it appears to have been repeatedly urged upon the attention of the Peruvian Government. I find, also, that on the 9th of November, 1888, Mr. Buck wrote you the result of his investigations as follows:

"He (the Peruvian minister of foreign affairs) has been led by my note to investigate the facts, and finds that you were in accord with the Iglesias commander, and, contrary to the orders of the prefect to remove all rolling stock, having left cars on the railroad for the use of those forces. You changed the engineer on the runaway locomotive, so that he made off with it to the Iglesias commander, thus enabling him to cross the desert in his movement on Arequipa. He then says the 'multa' was not imposed on you individually, but upon the railroad enterprise which you represent, and that it was charged by you against the railroad in books which you have concealed, and that the sum was discounted by the railroad from the salaries of Peruvian railroad employees. Minister Alzamora concludes by \* \* \* declining to admit your claim."

In conclusion, I am led to think that any delay in the presentation of your case was caused by you or your agents, who failed to place it in this legation until three years after the outrage.

Third. That this legation has given your case a thorough and exhaustive examination and seems to have made a decidedly forcible presentation of it to the Peruvian Government.

Fourth. That the Peruvian Government, after investigating it, positively refused to allow the claim, setting forth their reasons for such action.

Fifth. That the Department has not refused to give your case a hearing, but, on the contrary, it has investigated it thoroughly and instructed the minister here to demand an investigation and to press the matter forcibly and immediately upon the attention of the Government. It is not to be presumed that you are familiar with correspondence on the subject between the State Department and the legation, but I assure you that your case was received as all such cases are, in a friendly and impartial spirit, and orders were at once given to take it up.

Sixth. I do not find that the case is closed. From its first presentation by Mr. Thorndike, May 24, 1888, to Mr. Buck's letter to you, November 9, 1888, only six months or less had elapsed, during which time the records contain ample evidence of Mr. Buck's labors in numerous long documents to the Peruvian Government and to the Department about your case. I succeeded Mr. Buck on May 1, 1889, and since that date my attention has never been called to your case by you, your attorney, or your friends, or the Department until my visit to Mollendo.

I shall submit at once to the Department copies of my letters to you and your letter of the 23d ultimo, and ask for a statement of the present status of the case. I assure you, however, that you have no cause for ill feeling against this legation or the Department, as far as I am able to judge. Should the Department see fit to reopen the case, it is not too late, and I shall be glad to do anything properly in my power to bring about an intelligent and equitable settlement of the case.

Your obedient servant,

JOHN HICKS.

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*Mr. Hicks to Mr. Blaine.*

No. 327.]

LEGATION OF THE UNITED STATES,  
Lima, Peru, November 23, 1891. (Received December 15.)

SIR: Referring to my No. 310 of October 5, 1891, in regard to the claim against the Peruvian Government of V. H. MacCord, I now inclose a copy (1-327) of a letter received by the last mail from Mr. MacCord.

I have, etc.,

JOHN HICKS.

The above reference by Mr. Hicks to his No. 310 is found on page 27, Ex. Doc. No. 4, Fifty-third Congress, third session, and in the words following:

*Mr. Hicks to Mr. Blaine.*

No. 310.]

LEGATION OF THE UNITED STATES,  
Lima, Peru, October 5, 1891. (Received October 27.)

SIR: When I was at Mollendo and Arequipa, in the south of Peru, I was told by friends of Mr. MacCord that his arrest and imprisonment in 1885 was an outrage upon American rights which had never been noticed by the Department, and that Mr. MacCord had sought in vain to have his case properly taken up by the legation in Lima and our Government at home. Great ill feeling exists among Mr. MacCord's friends on the subject, and the indignation expressed against the legation and the United States Government was decidedly unpleasant.

I find, on investigating the matter, that it is almost entirely without foundation, and I have written to Mr. MacCord giving him a statement as it appears to me.

I would suggest that some statement from the Department, giving the reasons for not pressing the case, in such a manner as would convince Mr. MacCord that he has been fairly treated by the Department, might be a judicious step. I will say that I am of the impression that Mr. MacCord is a conscientious and honorable man and that he really feels that he has a grievance. Besides, the fact that he is and has been the manager of an important railroad and has a large circle of friends who sympathize with him would seem to make it a case worthy of explanation.

On the other hand, should it be the judgment of the Department that the case should be reopened, I will cheerfully attend to it to the best of my ability.

Your obedient servant,

JOHN HICKS.

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*Mr. MacCord to Mr. Hicks.*

AREQUIPA, November 14, 1891.

SIR: In reply to your esteemed favor dated 4th ultimo I beg to say that, according to my information on the subject, the allegations contained in Minister Alzamora's note were denied by a subsequent note from Minister Buck, and the minister of foreign affairs was asked to substantiate his charges with proofs. Nothing short of this could be called an investigation, surely.

I furnished proofs in support of my charges, and all I have ever asked is that the matter should be investigated; but to accept as truth the unsupported statements of the Peruvian minister does not, in my humble opinion, constitute an investigation. This was, however, done in the question of the violation of the Mollendo consular agency, and it does not surprise me that it should be also accepted in my case.

Every allegation contained in Minister Alzamora's note, as transcribed by you, is false.

I was not in accord with the Iglesias commander. I did not leave rolling stock on the road without the prefect's knowledge and consent. I did not change the engine driver. I never pretended that it was not the railway who paid the money (in the end), but I claimed that I was tortured to compel the payment of it.

I did not conceal the books in which the transaction was recorded, nor was the money ever deducted from Peruvian employees.

Why was Mr. Alzamora not asked to prove these statements? I believe he was so asked, but never gave the matter any more attention; and the Government of the United States, for reasons best known to the Secretary of State, allowed the investigation to stop there.

I claimed (and I furnished unimpeachable proofs of the facts) that I had been illegally imprisoned and unlawfully and barbarously treated to compel the payment of money for war purposes, and which could not even be termed a fine, because a fine presupposes an investigation of the facts in the case, which was denied me—or at least was not accorded, although it was promised to the deputation of the foreign consuls which waited upon the prefect for that purpose. My demand during the whole time of my imprisonment was to be placed on trial.

I claim, also, that no evidence has ever or can be produced to implicate me in any manner with the escape of the locomotives, and, further, that the prefect knew perfectly well that no blame could be attached to me. He himself has said so, and he himself told me in Mollendo, immediately after the Iglesias forces had left, that the money would be returned from the very first receipts of the Mollendo custom-house; that that money had saved the situation, etc.

You may possibly think (although I hope you do not) that because I was disposed to let the matter drop I had some fear that they might prove something against me; but such is not the case. I am aware that it has been insinuated that I had instructions from Mr. Thorndike to favor the Iglesias party, but such a charge is not worthy of nor does it receive a moment's consideration by anyone who knows the man; and as for myself, I refer to a record of twenty years' residence in Peru to show if I have ever in any way interested myself in the political strifes so frequent in this country.

My position demanded of me the strictest neutrality, which I never failed to observe. As manager of the railway it was my duty to serve the constituted authorities of the party in power at the headquarters where I was stationed, and I always did so honestly and to the best of my ability.

I know my duty as a law-abiding citizen, and I used to think I had a right to invoke the law in my own behalf and for my own protection.

If I was disposed to let the matter drop, it was because I found so much difficulty in prosecuting it, and because so much time had elapsed that a solution favorable to me now would probably not have the effect I expected and desired, i. e., to aid in preventing such lawless proceedings in future.

Had the Peruvian Government not put it out of my power, by approving the prefect's action (without hearing me at all), I should have sought redress in the courts of the country and never pretended to a money indemnity. What I desired was the punishment of the authority who abused his power; but the Government by its action shut the door to this, and left me no other course to pursue than the one I adopted, or else keep silence.

You will remember that at the time of the perpetration of the outrages complained of I was the consular agent of the United States at Arequipa. The agency was afterwards changed to Mollendo, where it was violated by an armed force, and the matter was settled, it appears, by the minister of foreign affairs making an absurd and false statement as to the fact, which was accepted without proofs, notwithstanding my statement, with official proofs, to the contrary.

They claimed that they thought the consulate was in Arequipa, but they took down the coat of arms from over the door in Mollendo, and I had official notice from the prefect of the department of the change to Mollendo.

They say I used the coat of arms and the flag on my place of residence in Arequipa—things I had never done after the change. As a matter of fact, I never had the shield until the agency was changed to Mollendo. Nothing of this was taken into account, however, in the settlement of the question, and I, quite naturally, I think, resigned the appointment in consequence.

Had the first outrage been properly dealt with I am satisfied the second would not have occurred.

I have nothing to add to my statements, with the proofs which are already on file in Washington, and my solicitor is there to answer questions or furnish more proofs if required.

My time is too much occupied here, and the matter seems fraught with too many difficulties for me to take much interest in it at this late date. I thank you, however, for having taken an interest in my behalf, and beg you to excuse the delay in replying, which was caused by excessive pressure of work.

I am, etc.,

V. H. MACCORD.

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*Mr. Hicks to Mr. MacCord.*

UNITED STATES LEGATION.

*Lima, November 28, 1891.*

SIR: I have your valued favor of the 14th instant in regard to your claim against the Peruvian Government. Your letter has been forwarded to the Department at Washington as a part of the history of the case, and will no doubt be duly considered. A careful perusal on my part does not induce me to change the views expressed to you in my letter of October 4, 1891. Your several letters have expressed a censure upon this legation and the State Department for (1) delay and neglect in taking up your claim, (2) improper consideration of the charges made by your assailants, and (3) unfair decisions against you.

1. I have already pointed out the fact that your claim was never presented to the legation or the State Department until nearly three years after the outrage, and that it was immediately taken up and vigorously pressed by the legation and the Department. It would seem, then, that the delay was partially, at least, your fault.

2. As you can not possibly know the action of the legation and the Department in the various letters, instructions, and decisions upon points in your case, I am at a loss to know how you can say the case was not investigated, or "nothing short of this could be called an investigation," or "to accept as truth the unsupported state-

ment of the Peruvian minister does not, in my humble opinion, constitute an investigation."

3. As I have already stated, the case has not yet been closed, as far as I can learn. The final decision, therefore, is not against you.

From what I have been able to learn of the case, I believe you have been cruelly and inhumanly treated, and that your case ought to have been presented to the Peruvian Government by telegraph to the American minister the moment you were arrested, or, if that was impracticable, by special messenger. Such an outrage loses its point with every day that intervenes from the moment of its occurrence until the time when reparation is demanded. An outrage against one's personal liberty, like an assault upon a woman's honor, is practically condoned if no complaint is made until years have elapsed. Besides, there were peculiar circumstances connected with it, growing out of a condition of war, which might easily be turned against you, and make it difficult for a tribunal sitting 6,000 miles away to satisfy itself of your innocence.

So far as the occurrence known as the "Mollendo outrage" is concerned, I see no reason for mixing the two. Yours is bad enough and must be considered by itself.

I am confident that your case has received at all times a hearing at the Department, and the main facts are known there. The ultimate and final decision of the case, I am quite sure, will be made upon legal and judicial lines and for reasons which will be found correct. If I can be of any service in the matter, I shall gladly do all I can to help you. Should you ever again be threatened with any similar difficulty, I hope you will not fail to notify me at once, and I am quite confident that you will have no cause to complain of want of action on my part.

Very truly, yours,

JOHN HICKS.

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*Mr. Hicks to Mr. MacCord.*

No. 113.]

UNITED STATES LEGATION,  
Lima, December 2, 1891.

SIR: By the last steamer I have received from the Department of State a reply to my dispatch of October 5, 1891, making a statement of your case and asking for an expression of the Department's views on the case. After the preliminary sentences, it says:

"The Department does not wish to volunteer explanations with reference to its action in cases of this character, although if it were addressed directly by Mr. MacCord it would, of course, make such reply to him as might seem proper under the circumstances. Your letter, however, to Mr. MacCord, of October 4, 1891, which he had not received at the date of your dispatch, ought to disabuse him of his wrongful impression. Mr. MacCord delayed for three years to present the matter to the legation for personal reasons affecting himself and his employer, and this delay on his part has been one of the grounds advanced by the Peruvian Government against the claim. It was presented to the legation May 24, 1888; the Department instructed the legation to present it to the Peruvian Government June 23 following, and Mr. Buck did so present it on the 6th of August of that year.

"Subsequently several notes passed between the legation and the Peruvian foreign office and the case was forcibly presented by the American minister. So far as the records of this Department disclose, Mr. Buck's note to the foreign office, November 14, 1888, has never been answered. Although the Peruvian Government had already twice refused to entertain the claim, the arguments advanced in this last note were entitled to consideration, and if the files of your legation confirm the fact that no reply has been received, you may call the matter to the attention of the foreign office and request such a reply."

In accordance with the foregoing instructions I have addressed a note to Dr. Elmore, minister of foreign affairs, and requested a reply to Mr. Buck's note above mentioned.

Should I hear anything in regard to the matter which may be of interest to you I will notify you.

Very truly, yours,

JOHN HICKS.

The "preliminary sentences" above referred to by Mr. Hicks as contained in Mr. Blaine's introduction to Mr. Hicks, and to which Mr. Hicks refers Mr. MacCord, are in words following, under date of November 6, 1891, from Washington:

SIR: I have received your dispatch No. 310 of October 5 relative to the claim of Mr. V. H. MacCord against the Government of Peru. You state that when you were at Arequipa Mr. MacCord and his friends claimed that he had not been able to obtain a hearing of his case in the Department or in the legation at Lima.

Such dispatch to Mr. Hicks was received by him in December, 1891, and MacCord advised of its reception by the foregoing note of December 2, 1891, and at the same time addressed the following note to the foreign office:

*Mr. Hicks to Señor Elmore.*

No. 67.]

LEGATION OF THE UNITED STATES,

*Lima, December 2, 1891.*

SIR: I beg leave most respectfully to call your excellency's attention to the following facts: On the 6th of August, 1888, the Hon. Charles W. Buck, United States minister, presented to your excellency's predecessor, at that time minister of exterior relations, the claim of Victor H. MacCord, of Arequipa, for damages growing out of his summary arrest and imprisonment and sentence of death.

The claim was the subject of numerous notes between the American minister and the minister of foreign affairs, but the last note of Mr. Buck, dated November 14, 1888, has never been answered.

I am instructed by the Department, under date of November 6, 1891, to respectfully request a reply to the note of Mr. Buck aforesaid.

Herewith I tender, etc.,

JOHN HICKS.

*Mr. MacCord to Mr. Hicks.*

AREQUIPA, January 14, 1892.

DEAR SIR: In reply to your esteemed favor of the 28th November and 2d of December, I beg to say that the paragraphs which you transcribe from the State Department's letters show that I was right in complaining that the investigation was dropped when the Peruvian Government failed to reply to Mr. Buck's note of November 14, 1888. This is precisely what I complained of, and what induced me to say that the investigation had not been complete; and even if the case was delayed in presentation, that does not justify its being dropped simply because the minister of foreign affairs declined or neglected to answer Mr. Buck's note.

If the case was delayed in presentation, it was not my fault. My protest was made immediately I got out of prison, and sent on to Lima. But, be that as it may, I wish you to note that I am not anxious to have the case reopened. Had I so desired, I should certainly have spoken to you about it here. The documents were shown you by Mr. Griffith in Mollendo without my knowledge or consent, and that is what has led to all our correspondence on the subject. I am heartily tired of the whole affair, and, as I have previously intimated to you, a solution in my favor would now work me more harm than good.

I beg you, therefore, to give yourself no more trouble about it, and to accept my thanks for the interest you have taken in my behalf.

I remain, dear sir, very truly,

V. H. MACCORD.

*Mr. Hicks to Mr. Foster.*

No. 472.]

LEGATION OF THE UNITED STATES,

*Lima, Peru, February 18, 1893. (Received March 11.)*

SIR: Referring to my dispatches Nos. 310, October 10, 1891, and 342, February 8, 1892, in regard to the claim of Mr. Victor H. MacCord, an American citizen, against the Government of Peru, I have the honor herewith to transmit the reply of the foreign office to my note of December 2, 1891. As this note was not immediately answered, I called the attention of the foreign office by note twice afterwards, and personally I brought it to the attention of the minister on several occasions, not less than six, but until now I have not been able to get a reply.

As Department no doubt expected, the rejoinder of the foreign office is a flat denial of the justice of Mr. MacCord's claim, and a statement of facts which, if true, places the claimant in the wrong and justifies the position taken by the Government.

I submit the letter with its accompanying documents and await the instructions of the Department.

I would suggest that I be instructed to furnish the claimant with a copy of the letter and affidavits, if the Department sees fit.

Your obedient servant,

JOHN HICKS.

## INCLOSURES REFERRED TO ABOVE.

[Inclosure 1 in 472.—Translation.]

*Dr. Ribeyro to Mr. Hicks.*PERUVIAN FOREIGN OFFICE,  
*Lima, February 15, 1893.*

MR. MINISTER: I have duly received your excellency's note of December 2, 1891, in which my attention has been called to the claim of your predecessor, the Hon. Charles W. Buck, presented to this ministry for damages to Mr. Victor H. MacCord, of Arequipa, proceeding from the imprisonment which he suffered by order of the prefect of that department, Colonel San Roman, in the month of June, 1885. Your excellency states that the note of your legation of November 14, 1888, has not been answered, and that you have instruction from the Department of State to request a reply.

Having examined the antecedents of the case, I find that the Hon. Mr. Buck on presenting this claim did not take into consideration the special circumstances which influenced the conduct of Colonel San Roman, and in the opinion of this Government it exonerates it from all responsibility.

In the month of June, 1885, an expedition left Lima against the Government of General Caceres, who was represented in Arequipa by the said Colonel San Roman. This officer at once took the necessary measures which he was obliged to do in his character of military chief of the department, and one of them was that the superintendent of the railroad at Mollendo remove all the rolling stock to the city.

Notwithstanding, the superintendent left at Mollendo a number of freight and other cars sufficient for the transportation of the forces of the enemy, thus showing his partiality.

This was the beginning of the execution of a plan originated in Lima, which was afterwards proved, by virtue of which the superintendent was to furnish to the government of General Yglesias locomotives and cars necessary for transportation, thus placing the company in a position of real and open hostility against Colonel San Roman, and subjecting his representatives to the consequences of these proceedings so treacherously carried out.

In fact, on the 13th of June the engine "Vitar" was sent from Arequipa with a convoy and a detachment of exploration, the conductor, Mackenzie, taking advantage of the moment that the troops left the cars, put on steam and went to join the enemy's troops that were already at Mollendo. Thus the latter possessed the means of transportation that they were wanting, and in a few days' time they arrive outside of Arequipa, where they fought several battles. That the flight of the locomotive was not the work of Mackenzie alone is proven by the fact that this person was not the ordinary conductor—that he had been placed in charge on the morning of the day when the event occurred.

Thus was proven the manifest complicity of the railroad company represented in Lima by Mr. John L. Thorndyke, who was in accord with General Yglesias, and in Arequipa by Mr. Victor MacCord, who opportunely received a telegram from his chief advising him to deliver up the cars. The prefect of Arequipa exacted a fine of 10,000 soles. He had power to exact this fine and even a more serious one against those who were hostile to him and compromising the interests of the Government he served.

But MacCord resisted payment, and it was necessary as regards him to take the necessary precautions to put a stop to his conspiring in favor of the enemy and to prevent the military authorities' prestige from suffering, so necessary at the critical moment of an attack against the city.

If the prefect employed harshness it was perfectly excusable, for nobody would have done otherwise in so difficult and dangerous a situation for this authority and on behalf of the national cause he defended.

MacCord has pretended to have paid the fine out of his private funds. This is contradicted by the company's books, where it appears debited to the working of the line under the name of "Difference in exchange." This sum was also compensated by a reduction that the railway company imposed upon the employees for this purpose in October, 1885. Therefore it is seen that this is not a case for the application of the principles invoked by the Hon. Mr. Buck, which this ministry does not pretend to examine, for the protection due to foreigners ceases when they take part in civil contests. The Peruvian Government deplors the occurrence of acts in which the prefect of Arequipa interfered with no other object but to save the situation created by the railway company and its representatives. But at the same time it considers that the prefect's conduct was justifiable under the circumstances, and the carrying out of such duty was the only course he could pursue.

I inclose for your excellency the reports existing at this ministry which will prove

the truth of the railway company's interference in the military operations of Colonel San Roman.

Reiterating to your excellency upon this occasion the sentiments of my high and distinguished consideration,

R. RIBEYRO.

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[Inclosure 2 in No. 472—Translation.]

*Certificate.*

I, Lantaro E. Cantuarias, superintending auditor of the Southern Railways, do hereby certify—

That the books of the Thorndyke administration were removed on the night of May 6 last, by order of Mr. Teodoro Harnsem, who, under the pretense of making some entries in the said books previous to delivering them up, retained possession of them, but offering to place them at the disposal of the present auditors, which, up to date, he has not done. Thus the undersigned is under the necessity of stating that, for want of the said books, it is not possible for him to name the page on which the item of 10,000 sols paid by the railway company to the prefecture of this department in June, 1885, is entered, but from reliable information received from trustworthy employees he has ascertained that the said sum has been debited to the working of the lines under the heading "Difference in exchange."

It is of public notoriety that the Thorndyke administration claimed the return of the said sum from the Supreme Government, and, on not obtaining it, in October, 1885, they deducted 25 per cent from those of the employees whose salaries exceeded 100 sols, and 20 per cent from those whose salaries did not exceed 100 sols, in order by this means to escape the payment referred to.

In proof of this I hereby sign my name. Done at Arequipa this 16th day of October, 1888.

L. E. CANTUARIAS,

*Superintendent of the Arequipa, Puno, and Cuzco Railways.*

The undersigned, notaries of this capital, certify that the preceding signature is that of Mr. Lantaro Cantuarias, at present superintendent of the Arequipa, etc., railroads.

Done at Arequipa this 16th day of October, 1888.

ABEL T. CAMPOS.

MARIANO A. CARRERA.

BENIGNO L. FERNANDEZ.

Attest:

CARLOS WIESSE,

*Chief Clerk Peruvian Foreign Office.*

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[Inclosure 3 in No. 472—Translation.]

*Certificate.*

I, Baltazar H. Morales, attorney of the tribunals of the Republic and secretary of the prefecture of the department.

I certify that an order exists in the official copy book of this office as follows:

"PREFECTURE, Arequipa, June 5, 1885.

"SUPERINTENDENT OF THE RAILWAYS:

"I am pleased to inform you of the following dispositions, the carrying out of which with the most scrupulous exactness will devolve upon the company, without excuse, and under the most serious responsibility. (1) The escort that leaves this city to-morrow for Mollendo shall return to Arequipa on Saturday night, or, at the latest, on Sunday morning, if it is so desired by the subprefect of Islay. (2) In the latter case the locomotive is to have steam up and be ready to depart on the instant of receiving orders at Mollendo. (3) The said train shall bring along with it all the rolling stock existing at Mollendo and intermediate stations, which is to be deposited at Arequipa. (4) There shall remain but one locomotive at Mollendo at the disposal of the subprefect of Islay, with steam up, and ready to leave on the instant of receiving orders. (5) No kind of rolling stock shall remain at Mollendo and intermediate stations from Sunday next.

"I hope the company you so worthily represent will carry out these orders. God have you in His holy keeping.

"MANUEL SAN ROMAN."

Arequipa, October 18, 1891.

B. H. MORALES.

Approved:

SAN ROMAN.

Attest:

CARLOS WIESSE,  
*Chief Clerk of the Peruvian Foreign Office.*

[Inclosure 4 in No. 472—Translation.]

*Certificate.*

Baltazar H. Morales, attorney of the tribunals of the Republic and secretary of the prefecture of the department.

I certify that a resolution exists among the archives under my care as follows:

"REPUBLIC OF PERU,  
"THE SEAL OF THE PREFECTURE OF THE DEPARTMENT,  
"Arequipa, June 14, 1885.

"Whereas the engine driver, Mr. N. Mackenzie, in charge of the locomotive 'Vitar,' conveying a force under the command of Sergt. Maj. Mr. Emique Valderz, took advantage of the moment at which the troops and their commander left the cars in which they traveled, taking them by surprise, fled hastily from the 'Vitar' station with the said locomotive, which he placed at the disposal of Col. D. Vidal Garcia y Garcia, chief of the forces sent against this place by Mr. Miguel Iglesias;

"Whereas an act of this character affords to the enemy's division the facility of removing to Arequipa, thus crossing the 30 leagues of desert that separate it from Mollendo without difficulty, very seriously affecting the success of the constitutional arms; and as the immediate consequence, the definite result of the operations the chief of state is engaged in carrying out with his forces, and finally the cause of law, and of the constitution. And furthermore, the railroad company has left at the Mollendo and intermediate stations sufficient rolling stock for the transportation of the said troops of Col. Garcia y Garcia, in defiance of the orders forwarded from this office in the note of the 5th instant, and in virtue of which he should have removed all that stock to the Arequipa station on the 7th instant, under the most serious responsibility.

"Whereas, on examining into the cause of the acts referred to, which have the appearance of true rebellion against the Government and legitimate authorities established in the department, it has come to light that it is no other than the clandestine agreement celebrated between the company and the government of Mr. Miguel Iglesias;

"Whereas the superintendent of the railways, Mr. Jose Mannel Braun, has exhibited a telegraphic dispatch at this office, forwarded to him by Col. Garcia y Garcia from Mollendo, stating that by agreement celebrated in Lima between Mr. John Thorndyke and Mr. Miguel Iglesias, his minister of war, and Colonel Garcia, the company were under the obligation to furnish them with all the railway stock their expedition required within twenty-four hours of its landing at Mollendo; whereas the delinquency of the said company being thus clearly proved, it is necessary to punish it in a manner convenient and adequate to the delicate circumstances of the case, and to this effect the prefecture is invested by the Supreme Government with ample and extraordinary powers; it has therefore been resolved:

"(1) To impose upon the Southern Railway Company a fine of 10,000 sols.

"(2) That the manner of making the said fine effective shall be arranged with the legal representative, Mr. Victor MacCord.

"For the carrying into effect of these resolutions let the treasury and the subprefecture of the district be informed of the same; report to the supreme Government and place amongst the archives."

AREQUIPA, October 18, 1891.

SAN ROMAN.

Approved:

B. H. MORALES.

Attest:

SAN ROMAN.

CARLOS WIESSE,  
*Chief Clerk of the Peruvian Foreign Office.*

[Inclosure 5 in No. 472.]

*Mr. Hicks to Dr. Ribeyro.*

No. 132.]

LEGATION OF THE UNITED STATES,  
*Lima, February 18, 1893.*

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 15th instant, in regard to the claim of Victor H. MacCord, an American citizen, with the accompanying affidavits on the subject.

Please accept my thanks for the note, which seems to be ably drawn up.

I will submit the note, with its accompanying documents, to the Department of State, and await its further instructions.

I have, etc.,

JOHN HICKS.

[Inclosure 6 in No. 472.]

*Mr. Hicks to Mr. MacCord.*

No. 195.]

LEGATION OF THE UNITED STATES,  
*Lima, February 18, 1893.*

SIR: I have the honor to inform you that I have just received from the Peruvian foreign office a reply, dated February 15, 1893, to my note of December 2, 1891, in regard to your claim. I may say in addition that since my note was written I have repeatedly called the attention of the foreign office to the matter, but until now no answer has been forthcoming.

The letter was accompanied by a number of affidavits apparently substantiating the statements it contained, and the whole has been transmitted to the Department of State for instructions. I have asked permission of the Department to send you a copy of the letter and affidavits, and if Department consents I will send it to you at once.

I have the honor to be, sir, etc.,

JOHN HICKS.

Late in the winter of 1892 access to the State Department was sought by a neighbor of Mr. MacCord's family in Pennsylvania, Rev. H. D. Lowing, in company with his then member of Congress and a member of Congress elect to the Fifty-third Congress, when it was then learned that without any instruction from the State Department, or authority whatever, Mr. Hicks, United States minister to Peru, while on a visit to southern Peru, after leaving Arequipa, and while at Mollendo, on the coast, opened a personal correspondence with Mr. MacCord at Arequipa, under date of September 17, 1891, concerning his claim, which Mr. MacCord replied to, and which was followed by a second from Lima by Mr. Hicks, October 4, another November 28, and one December 2. That of November 28 was not replied to by Mr. MacCord until the receipt of that from Mr. Hicks of December 2, and then both answered by Mr. MacCord January 14, 1892, all of which are found in Executive Document No. 4, Fifty-third Congress, third session, pages 28 to 32, inclusive. Every one of Mr. MacCord's letters teems with complaints of the failure of his Government to follow up the demands contained in Mr. Buck's dispatch of November 14, 1888, and each of Mr. Hicks's letters distorts the records of the State Department and the legation, except his first from Mollendo, in which he was fully "impressed with the enormity of the outrage."

The excursion by Mr. Hicks from his legation at Lima into Mr. MacCord's immediate vicinity, several days' travel distant, and there opening a correspondence touching a matter to which his attention had neither been called by his Government or invited by MacCord, is not easily accounted for upon any recognized regulation or principle of diplomacy. But surprise in the premises will cease by a perusal of the dispatch of Mr. Hicks to Mr. Foster, under date of February 18, 1893 (Ex. Doc. No. 18, Fifty-third Congress, third session, p. 6), in which he

virtually not only becomes the accuser of Mr. MacCord, but the apologist and justifier of Peru, and his note to Dr. Ribegro, as follows:

[No. 132.

LEGATION OF THE UNITED STATES,  
Lima, February 18, 1893.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 15th instant, in regard to the claim of Victor H. MacCord, an American citizen, with the accompanying affidavits on the subject.

Please accept my thanks for the note, which seems to be ably drawn up.

I will submit the note, with its accompanying documents, to the Department of State, and await its further instructions.

I have, etc.,

JOHN HICKS.

Soon after Secretary Gresham became Secretary of State the attorney of Mr. MacCord asked for the examination and consideration of the claim, which was promised as early as the business of the Department would permit; at the same time he suggested that Mr. MacCord's letter of January 14, 1892, although personal, should be withdrawn, such request being based upon the following letter, addressed to Secretary Gresham:

WASHINGTON, August 31, 1863.

Hon. W. Q. GRESHAM, *Secretary of State*.

SIR: In the summer of 1888, as the solicitor of Victor H. MacCord, I prepared and filed, under the direction of the late Dr. Wharton, at that time the solicitor of the State Department, a memorial setting forth a series of barbarous and brutal treatment by Peruvians in southern Peru, at Arequipa and Mollendo, and while MacCord was the accredited consular agent of the United States in Peru; prepared through Mr. MacCord an abundance of evidence of the highest character in Peru, every allegation set forth in such memorial asking reparation in damages for indignities to his person, involving his arrest, imprisonment, almost starvation for days and nights, at one time marched out by a bevy of soldiers at midnight under an order to be shot, and only released from prison by the citizens of the city of Arequipa raising and paying his oppressors the sum of \$10,000, thereby purchasing his freedom, such arrest and imprisonment being without cause or provocation upon Mr. MacCord's part.

That such claim was promptly and vigorously prosecuted by United States Minister Buck under instructions from Secretary Bayard, the discussion having been closed by an exhaustive review of the case in Mr. MacCord's favor, by Minister Buck, and forwarded to his Government shortly before his resignation and recall early in 1889, and to which no reply was attempted by the Peruvian Government for nearly four years after, and which consisted in nothing but a rehash of allegations made to Minister Buck's demand in 1888 for indemnity, and to which Minister Buck had triumphantly replied.

That immediately after the confirmation of Mr. Hicks as the successor of Minister Buck, I, by the politeness of Senator Sawyer, obtained an interview with Mr. Hicks in Senator Sawyer's committee room at the Capitol, and explained fully and at great length to Mr. Hicks the claim of Mr. MacCord and its enormity, whereupon he promised to do everything in his power, both personally and officially, in the prosecution of the claim.

That leaving Mr. Hicks, I called upon Mr. Walker Blaine, who was in charge or on duty at the solicitor's department of the State Department, and after a full and careful examination of the papers on file, including Minister Buck's exhaustive reply to the foreign office's allegation in attempting to answer the demand made by Mr. MacCord's Government, Mr. Walker Blaine agreed to advise me by telegraph at my home in Meadville when Mr. Hicks arrived at the State Department preparatory to his departure, in order that an agreement could be entered into as to the special instruction Mr. Hicks should receive touching the adjustment of the claim.

That upon my return to Meadville I wrote Mr. Hicks at Oshkosh, and requested him to be kind enough to advise me a few days before he would leave for Washington, in order to arrange my matters to meet him in Washington promptly.

That after a month or more I noticed by a New York paper that he had sailed the day before for South America, and at once came to Washington and asked Mr. Walker Blaine for an explanation, and was by him told that Mr. Hicks could remain but a day, and that he knew that I could not get there in time if advised by telegraph.

That I found upon inquiry that Mr. Hicks was here in Washington several days before leaving for Peru; that after arriving in Lima, Mr. Hicks, in reply to a letter from me upon the subject, again promised to do everything in his power looking to Mr. MacCord's relief.

That in December, 1889, failing in persistent efforts to see Secretary Blaine in the matter, I laid the whole case before President Harrison, who promised action by the State Department.

That after waiting until September, 1891, I reminded the President of the correspondence with him of December, 1889, when he by letter to me again promised action.

That about that time Mr. Hicks appears in Arequipa, the headquarters of Mr. MacCord, and after remaining there some days returned to his legation at Lima, stopping at Mollendo a few days, writes Mr. MacCord expressing surprise at his not having spoken to him (Hicks) while at Arequipa, adding that he (MacCord) had been shamefully treated by the authorities in Arequipa, and that the matter ought to be pushed.

That exasperated by the delay of the State Department after Mr. Hicks's appointment and a knowledge of the fact of Mr. Blaine's refusal to see me in the case—four long years—Mr. MacCord wrote Mr. Hicks in reply that if he had wished to take further action he should have spoken to him (Hicks) while in Arequipa.

That upon Mr. Hicks's return to Lima he wrote Mr. MacCord again, saying he had looked the matter up in the records of the legation, and pretended that he had never heard of it before, and then gave what he called a complete record of the several notes which had passed between the legation and the Government on the subject, but left out the last note of Mr. Buck's that had not been answered, and added that the record of the legation showed that the Washington Government had given the case very careful consideration, and that he (MacCord) had no reason to complain, unless that it might be for delay, and that at least was partly his (MacCord's) fault. That in one of Mr. Hicks's letters, dated October 4, 1891, he stated to MacCord that he "succeeded Mr. Buck in May, 1889, and since that date my attention has never been called to your case by you, your attorney, or your friends, or the Department, until my visit to Mollendo."

That the letter to Mr. Hicks by MacCord which expressed a desire of not prosecuting the case further was a personal letter and not intended for the use Mr. Hicks made of it, and for that reason I ask that this case be now examined upon its merits, and, if possible, the inaction of Mr. MacCord's Government for the last four years accounted for.

All of which is most respectfully submitted.

S. NEWTON PETTIS,  
*Solicitor for V. H. MacCord.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 10, 11, 12.)

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*Mr. MacCord to Mr. Pettis.*

VALPARAISO, May 24, 1893.

MY DEAR MR. PETTIS: Your two favors of April 11 were received here to-day, and I hasten to reply at once, fearing you may find the delay longer than you expected on account of the forwarding.

I left Arequipa some two months ago for a trip through Bolivia, down the river Desaguadero, and through Chile. I had intended visiting the United States this year, but as I could not do both I have preferred this as the most convenient from a financial point of view.

With reference to the letter you speak of, I will say by way of explanation that it was intended for Mr. Hicks personally rather than as an official document, to be made use of as he has done. You are aware of the manner in which Mr. Hicks behaved in regard to my claim before he left the United States, and will readily comprehend why I thought it useless to treat with him in reference to it here. In fact, I felt so incensed with him that I could scarcely bring myself to treat him with common civility, much less to consult with him on the subject of my claim, and it was only after he left Arequipa that he wrote to me saying that he thought I had been shamefully treated by the authorities in Arequipa, and that the matter ought to be pushed.

I replied that it was now too late; that a result, even in my favor, could not at this late date serve the purpose which I had in view when the claim was made (that of punishing the party who committed the outrage), and I could not help adding that had I wished him to take the matter up I should have spoken to him about it when in Arequipa. This was while he was still at Mollendo. After reaching Lima, Mr. Hicks wrote me again, saying he looked the matter up in the records of the legation, and pretended that he had never heard of it before his visit to Arequipa, which you know is not true. He proceeded to give me what he said was a complete record of the several notes which had passed between the legation and the Government on the subject, but left out the last note of Mr. Buck's, which had not been answered.

I wrote in reply, expressing my surprise at this omission, and insinuated that I thought it useless for him to trouble himself in the matter, as the Government at Washington did not seem inclined to take up the question. He replied that by the record of the legation it appeared the Washington Government had given the matter very careful consideration, and that I had no cause to complain, unless that it might be of delay, and that, at least, was partly my own fault.

He said the Peruvian Government accused me of having been in connivance with the Iglesias party. I replied that I could not feel satisfied with an investigation that would accept an unsupported allegation of that nature as against such proof of illegal and brutal treatment as I had furnished, and which were on file at Washington; and I again requested him not to trouble himself about the case, as it was evident that the Government at home did not wish to do anything with it, as my attorney there had not been able to even have it read by Mr. Blaine; and when he complained to the President he was simply referred back to Blaine; I added that I was not disposed to make myself obnoxious throughout the country by insisting in stirring up an old question when I was quite convinced that my Government would never carry it through; that I would be certain to suffer in my business interests by persisting in the claim, and I preferred to let it drop; you can understand this, knowing the people. I should be harassed in many ways and pointed out on the street as an enemy of Peru, where I have now considerable interest owing, in a great measure, to the dislike I took at my own country when no redress was to be had for repeated outrages.

You will doubtless remember the consulate question in Mollendo which caused me to resign the appointment; that was in fact a violation of the consulate perpetrated by the authorities themselves, and premeditated, but nothing was done about it. The statement of the Government that they did not know it was the consulate was accepted as sufficient excuse and explanation, when they had taken down the shield from over the door.

I could have furnished the proof, if more was required, of their knowing it was the consulate, but I was not asked. The false statement of the prefect that he thought the consulate was in Arequipa was accepted as sufficient explanation, and the inference was naturally that I must be incompetent. Is it any wonder that I resigned; could anyone with a particle of self-respect have done otherwise? I think not; and if I have since then sometimes spoken harshly and disrespectfully of my country, or at least of its ruler, it must be conceded that I had some cause for so doing.

This last case of so-called violation of the consulate at Mollendo, and to which you refer, was not a violation of the consulate at all. What happened was that the temporary "acting consulate agent" (a German citizen) had removed the books, blanks, etc., to his own office for more convenience in attending to the work, and the door of his office was broken in during a street riot. The consular shield and flag had never been removed there, and consequently it could not have been known or recognized as a consulate. This was still at the old place and was not touched. How, then, could Mr. Hicks report that the consulate had been violated?

If Peru has been made to apologize or pay for this pretended violation, it is a gross injustice.

Just before I left Peru I received the inclosed note from Mr. Hicks, No. 190, February 20, 1893, to which I have not replied nor do I intend to. The matter is in your hands, and if, in view of what I have said, you think it convenient to try to push it to a conclusion, I shall not object; but I am afraid it will cause me more trouble and annoyance than any good I can get out of it.

Yours, truly,

V. H. MACCORD.

Hon. S. NEWTON PETTIS, *Meadville, Pa.*

(See Ex. Doc. No. 18, Fifty-third Congress, third session, pp. 12, 13.)

Mr. Pettis to Mr. Gresham, inclosing letter from MacCord to Mr. Gresham:

*Mr. Pettis to Mr. Gresham.*

WASHINGTON, November 28, 1893.

SIR: I have the honor to inclose herewith a letter received from Victor H. MacCord, sojourning at Arequipa, Peru, South America, which speaks for itself in connection with his claim against the Government of Peru.

I am, etc.,

S. NEWTON PETTIS.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 15.)

*Mr. MacCord to Mr. Gresham.*

AREQUIPA, PERU, October 29, 1893. (Received November 27.)

SIR: It gives me great pleasure to learn through my solicitor, Judge Pettis, of Meadville, Pa., that you are disposed to accede to his request in my interest by resuming the consideration of a claim made by him in my behalf against the Government of Peru in 1888, and which was efficiently prosecuted by the United States during the time Secretary Bayard continued in office; but for some reason Mr. Blaine steadily refused during his term to prosecute the claim, notwithstanding the constant and persistent efforts of my solicitor to that effect.

Your action in the premises, looking to the righting of a grievous wrong, will be thoroughly appreciated in this country, not only by North Americans, but by all foreigners and right-minded Peruvians as well.

The good name of our Government has undoubtedly suffered here by reason of its apathy—to put it as mildly as possible—in this case. Although I had been assured by my Government in 1888 that the evidence I had furnished was sufficient, I stated to Minister Hicks, in a personal letter to him dated November 14, 1891, that my solicitor was at Washington, where my proofs were filed, and would answer any questions, or furnish further proofs if necessary.

With thanks for the good will you have manifested in the matter, I am, etc.,

V. H. MACCORD.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 16.)

After the receipt of the above letter from MacCord, Acting Secretary Uhl addressed Minister McKenzie, at Lima, upon the subject of Mr. MacCord's letter of January 14, 1892, as will be seen below:

*Mr. Uhl to Mr. McKenzie.*

No. 48.]

DEPARTMENT OF STATE,  
Washington, December 29, 1893.

SIR: Adverting to your predecessor's dispatch No. 472, of February 18, 1893, concerning the claim of Victor H. MacCord against the Government of Peru, you are requested to make a thorough examination of this claim as it appears on the files of your legation and report the result to this Department.

It is desired that you will also ascertain, if practicable, what is thought of the merits of the claim by disinterested parties residing in the country and having knowledge of its origin and circumstances.

You will notice that Mr. Hicks, in his dispatch No. 342, of February 9, 1892, forwarded to the Department a copy of a letter from MacCord in which the latter requested that no further action should be taken in relation to his claim, as a solution in his favor would work him more harm than good. You will endeavor to ascertain whether the contents of this letter, or the attitude of Mr. MacCord with respect to his claim, was ever brought to the attention of the Peruvian Government.

In doing this you will carefully avoid giving to that Government any information concerning the letter referred to, but will confine yourself to ascertaining by casual reference to the case in conversation with the minister of foreign affairs, or by such other means as you may find practicable, whether MacCord's position with reference to the claim, as stated in that letter, ever came to the knowledge of the Peruvian authorities.

I am, etc.,

EDWIN F. UHL,  
Acting Secretary.

JAMES A. MCKENZIE, Esq., etc.

(See Ex. Doc. No. 18, Fifty-third Congress, third session, p. 16.)

*Mr. McKenzie to Mr. Gresham.*

No. 82.]

UNITED STATES LEGATION,  
Lima, Peru, January 27, 1894. (Received February 23.)

SIR: I have the honor to acknowledge receipt of Department's No. 48 of December 29, 1893, in relation to the claim of Victor H. MacCord v. The Republic of Peru.

According to the Department's instructions, I have made a thorough examination of the case as it appears of record on the files of this legation, and I am satisfied the Peruvian foreign office regards the whole matter as having been definitely closed, as per its note to this legation from the then minister from foreign relations, Señor

Dr. Don Ramon Ribeyro, under date of February 15, 1893, and duly forwarded to the Department in Mr. Hicks's No. 472 of February 18, 1893.

Mr. Neill, the secretary of this legation, at my suggestion, had a guarded interview with Señor Dr. Don Carlos Wiese, the chief clerk of the foreign office here, and ascertained that no correspondence had been received there from Mr. MacCord on the subject of his claim, and that they had no knowledge of his letter from Arequipa, dated January 14, 1892, in which he distinctly withdrew his claim etc., but that the foreign office regarded the matter as no longer constituting a diplomatic claim.

Mr. John L. Thorndike, a friend of Mr. MacCord, now residing in Lima, informs the legation that he had a conversation with Mr. MacCord within the month last past, in Arequipa, and in discussing the claim Mr. MacCord told him he did not desire the case reopened, and that if it was reopened it would not be done by his advice or with his consent.

I have the honor, etc.,

J. A. MCKENZIE.

The report of the committee is made more voluminous than would have been necessary had the confusion in the arrangement of dates been avoided in the printing of the "papers and correspondence" sent to the Senate by the State Department, and which the committee have in their report arranged chronologically, and from which it is easily ascertained.

The committee report:

That the claimant, Victor H. MacCord, of Linesville, in the county of Crawford and State of Pennsylvania, and a citizen of the United States, while lawfully engaged in the discharge of his duties as acting superintendent of the Arequipa, Puno and Cuzco Railroad in June, 1885, and at the time a consular agent of the United States in Peru, was, without cause or provocation on his part, arrested by order of Manuel San Roman, prefect of the city of Arequipa, Peru, appointed by General Caceres, who had recently proclaimed himself as the head of a Constitutional Government for Peru, and on the 12th day of June, 1885, imprisoned in the San Francisco Barracks, at Arequipa, Peru, where he received the following order:

PREFECTURE OF THE DEPARTMENT, *June 12, 1885.*

MR. MACCORD,

*Superintendent of the Railroads:*

You will direct by telegraph all orders of the case, in order that the rail line between Cachendo and La Joya remain completely unused.

You will have for that fulfillment until to-morrow very early, in order that this order be terminantly complied with. As to that, you being in the power of the authority which has to comply with his duty in these circumstances, the mere fact of the fugitive engine passing from La Joya in the direction of this city will place me in the case of shooting you without the least delay, since you alone are responsible for what may happen.

God guard you.

MAN'L SAN ROMAN.

[Indorsement—Translation.]

MR. A. TAMAYO, *Present:*

Be pleased to dictate the measures most efficient in order to comply with the order above indicated of the señor prefect.

V. H. MACCORD.

Cuartel of San Francisco (date as above).

#### CERTIFICATE.

These are to certify the above-written signatures of Man'l San Roman, prefect of the department of Arequipa, under the then Government of General Caceres, to be of his true and proper handwriting, the present document having been handed me to keep under date the 12th day of the month of June, 1885.

British vice-consulate, Arequipa, Peru, this 22d day of the month of October, 1888.

[SEAL.]

ALEX. HARTLEY, *British Vice-Consul.*

That some time after the receipt of the above order an officer came to his cell and advised him to arrange his affairs, as there was an order to shoot him within an hour, and that within half an hour afterwards he was marched out to the parade grounds and stood up before a file of soldiers armed with rifles and asked if he wished to say anything, as he was to be shot, when he replied that he had committed no crime and had nothing to say: whereupon, after consultation among three or four officers, one remarked that it was not good to kill a man, he was then led back to his cell.

That on the 13th day of June, 1885, he was notified that by order of the prefect he must pay a fine of 10,000 soles for the escape of an engine, and that it must be paid at once or extreme measures would be taken against his person to compel payment.

That MacCord answered, denying the right to impose a fine implying culpability, without even a semblance of an investigation, and demanded a trial, if there was a charge of any kind against him, which was refused.

That upon the following day, June 14, notice was verbally given as coming from the prefect that unless the 10,000 soles were paid before 3 o'clock in the afternoon the "extreme measures" threatened would be applied and the fine increased to 15,000 soles, and if delayed longer to 20,000 soles, when reply was made by MacCord, reiterating his demand for a trial, and protesting against the illegality of the fine and his arrest and confinement.

That on the morning of the 15th of June word was brought to his cell that by order of the prefect MacCord should not be allowed either food or water, and that every article of furniture be removed from his cell, which order was at once carried out, his cell being damp, with a brick floor, and he compelled to stand, as everything, even to a rough stone, which might have served as a seat, was taken away: when the commercial houses of the city of Arequipa, doubtless realizing that MacCord could not long survive such inhuman treatment, raised and paid the 10,000 soles, and he was, late in the afternoon, allowed his liberty. The first use made of his pardon was to protest against the barbarity to which he had been subjected, which protest, hereinbefore set out in this report and printed upon pages 10, 11, and 12 of Ex. Doc. No. 4, Fifty-third Congress, third session, concludes as follows:

It appearing by the foregoing deposition that the laws of the country have been defiantly infringed by an authority who, not being a judge, imposes fines and executes punishments arbitrarily and in violation of the laws, and by keeping a prisoner over the time allowed by law without submitting him to the proper tribunal for trial, and subjecting him to barbarous and inhuman treatment whilst so detained, I, Victor H. MacCord, do make this my formal protest against the arbitrary and abusive proceeding of the aforesaid prefect of Arequipa, Colonel Don Manuel San Roman, and do declare that the ten thousand soles, in silver coin, were paid under pressure of violence and reserving the right to make a claim to a higher authority, and to the tribunals of justice of the country, and to appeal to diplomatic ways, if necessary in defence of my own personal rights and in protection of the interests confided to my care.

Let it be put on record that the first use made of my liberty is to enter this protest at the British vice-consulate, this sixteenth day of June, one thousand eight hundred and eighty-five.

V. H. MACCORD.

Thus protested and declared in due form of law at Arequipa aforesaid the day, month, and year first before written.

[SEAL.]

ALEX. HARTLEY,  
*Acting British Vice-Consul.*

That such protest was subsequently verified, in support of MacCord's memorial addressed to Secretary Bayard, by his solicitor, in August,

1888, as found on pages 2, 3, and 4 of Ex. Doc. No. 18, Fifty-third Congress, third session, by the following certificate:

Those who subscribed, natives and strangers, resident in this city during the month of June, 1885, having been well acquainted with the terms of the protest which preceded, made by Mr. MacCord, superintendent of the railroads of Mollendo to Puño and Cuzco, before Mr. Alex. Hartley, vice-consul of Her Britannic Majesty in Arequipa, being animated by a lively sentiment of the strictest justice, consider it due him to declare, as in effect they do declare, that those things which it evidences, having been in this locality, of public notoriety, absolutely conform with the truth of what occurred, all and each of the facts which are found set forth in the said protest.

Which, with the respective signatures they desire to authenticate, for the ends which Mr. MacCord, the author of the aforesaid documents, may consider proper.

Arequipa.

C. WAGNER, [L. S.]  
*Consul of the German Empire.*  
 EMILIO PETERSEN, [L. S.]  
*Consul of the Netherlands.*  
 GMO. MORRISON, [L. S.]  
*Vice-Consul, Argentino.*  
 JOSÉ V. RIVERA, [L. S.]  
*Vice-Consul of Portugal.*  
 JOSÉ EGUREN, [L. S.]  
*Vice-Consul of Spain.*  
 GUILLERMO RICKETTS, [L. S.]  
 G. HARMSSEN, [L. S.]  
*Consul of Austria-Hungary.*  
 P. GUINASSI, [L. S.]  
*Consular Agent of Italy.*  
 BERNARDO WEIS, [L. S.]  
*Consul of Bolivia.*  
 ALEX. HARTLEY, [L. S.]  
*British Vice-Consul.*  
 E. PONCIGNON, [L. S.]  
*Vice-Consular Agent of France.*  
 FRA. K. GIBBONS.  
 WILLIAM CANNON.  
 JNO. BOURCHIER.  
 MNR. BUSTAMANTE Y BARREDA.

WALTER NICKOLSON.  
 FEODORO HARMSSEN.  
 THOS. PEAKE.  
 JAMES G. BEAUMONT.  
 ADOLFO WESTPHALEN.  
 A. CAMBIAGGO.  
 CARLOS ACKERMANN.  
 P. GOMEZ CORNESS.  
 TEDEO W. SCHERWOOD.  
 BDO. NYCANDER.  
 PATRICK GIBSON.  
 H. MEIER.  
 PAULSON HNS.  
 JAMES GOLDING.  
 ALEXANDER CLARK.  
 ROBERTO KELLER.  
 H. P. STANFIELD.  
 JUAN GUILLARD.  
 JORGE BUCIEU  
 GUILLERMO CHEBANAIX.  
 M. LINARES CUNNING.  
 MIGUEL V. VARGAS.  
 P. M. PARODI.  
 H. SAENZ.

That no charge was ever formulated against MacCord is evidence that no sufficient ground existed for preferring one, and such position is emphasized by the fact that none ever was made, while the record in the case is demonstration itself that none in truth could be made.

That the arrest was unlawful and oppressive because no charge was made, and consequently his imprisonment was in violation of the law of Peru, which declares "that prisons are only places of detention, and that no one shall be so detained for a longer period than twenty-four hours without being handed over to a judge for trial."

That MacCord's confinement and maltreatment were not only in violation of the local law of Peru, but the larger principles of international law, and, in a still higher sense, the incontrovertible guarantees of a treaty at the time existing between the United States and Peru, as found in article 16, which reads:

The high contracting parties promise and engage to give full, perfect protection to the persons and property of the citizens of each other, of all classes and occupations, who may be dwelling or transient in the territories subject to their respective jurisdiction; they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty to employ, in all cases, the advocates, attorneys, notaries, or agents, of whatever description, whom they may think proper. The said citizens shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*; and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest, and

if not so examined the accused shall forthwith be discharged from custody. Said citizens, when detained in prison, shall be treated during their imprisonment with humanity, and no unnecessary severity shall be exercised toward them.

That at the time of the arrest and imprisonment of Mr. MacCord in June, 1885, there were two distinct Governments in existence in Peru—one in the north of Peru, with President Iglesias at its head at Lima; the other in the south of the Republic, with General Caceres at the head of his proclaimed constitutional Government at Arequipa. That by the act which General Caceres and Iglesias signed December 2, 1885, both Governments were, by their mutual consent, merged into the Provisional Government thereby established, of which the present Government, by popular and peaceable determination, made under the authority and administration of said Provisional Government, became the successor, so that whatever may have been the character of either the Iglesias or the Caceres Government, by consent of each and of the people of Peru, given through the subsequent elections, the then constitutional Government became the successor of both, and hence was responsible under the circumstances of the case for the acts committed by the officials, or under the authority of either, so far as they affected the rights, interests, or liberty of Mr. MacCord, a citizen of the United States, and especially so inasmuch as on the 3d of June, 1886, in pursuance of the compact between General Caceres and Iglesias, in December, 1885, hereinbefore referred to, General Caceres, to whose Government Colonel San Roman had pertained in his occupancy of Arequipa, was installed as the constitutional President of the Republic, which was done after due ascertainment of the popular will, and by the proclamation of the Peruvian Congress assembled, as stated by the Provisional Government, in fulfillment of the arrangement of December, 1885, made between General Caceres and Iglesias.

That the prefect, Colonel San Roman, by whose orders, under General Caceres, Mr. MacCord was subjected to the inhuman treatment complained of on the 8th day of December, 1886, solicited from the Peruvian Government at Lima the approval of his proceedings in the matter, whereupon that Government, without a hearing or even giving notice that the question was being investigated or considered, proceeded, under date of December 15, 1886, to approve the actions of the prefect in the matter, and of which Mr. MacCord was informed by official note dated December 22 of the same year, all of which was conveyed to Minister Alzamora by Minister Buck in his note of November 14, 1888, to the foreign office by way of correcting an error contained in the note of August 28, 1888, addressed to Minister Buck by Minister Alzamora stating that his "Government had never had knowledge of the facts referred to in said protest," referring to the protest of Mr. MacCord inclosed to Mr. Alzamora by Mr. Buck under date of August 6, 1888, and by direction of the State Department "requesting an explanation in the case of Mr. Victor H. MacCord, now United States consular agent for Mollendo," to which Mr. Alzamora never made reply.

That although the foreign office of Peru entered upon the discussion of the subject under date of August 28, 1888, in reply to Mr. Buck's of August 6, 1888, declaring that "no matter what the realities or facts to which Mr. MacCord refers, the responsibility, if such should exist, does not therefore rest upon the Government of the nation, but personally on the authors of them, inasmuch as the acts complained of were in fact the acts of a chief in arms against the Government then recognized as legitimate by all nations, especially the Great Republic." Mr. Alzamora did, in his note of September 6, 1888, to Mr. Buck, reply-

ing to his of the 3d idem, expressly abandon his Government's first contention that it was not responsible for acts during the revolution referred to, and expressly assumed them, which position was treated by Mr. Buck in his note—in his note to Mr. Alzamora under date of September 14, 1888, as abandoned by the foreign office, such note to Mr. Alzamora closing the discussion, no reply being made to that of Mr. Buck by Mr. Alzamora.

If a nation or its ruler approves and ratifies the act committed by a citizen it makes that act its own. The offense must then be attributed to the nation as the true author of the injury, of which the citizen is perhaps only the instrument. (Hallech, *Int. Law*, p. 275; Vattel, *liv. 2*, ch. 6, §§ 74-77.)

That the impropriety of treating as material or attaching any importance to the personal letter of Mr. MacCord to Mr. Hicks, dated January 14, 1892, is apparent from the fact that, the Government having taken up his claim, he had no control over it, and especially so as the subject and questions under consideration involve not only the rights of an American citizen who was brutally treated in a foreign country, but in a double sense the national honor, in that MacCord was not only a citizen of the United States, but was one of its consular agents in Peru. It grew out of a private correspondence with Mr. Hicks, officiously opened by him while absent from his legation, and at Mollendo, in September, 1891, and into which Mr. MacCord was seemingly betrayed. Such letter, as well as each of the others addressed by Mr. MacCord to Mr. Hicks, corrected the garbled, erroneous, and inaccurate statements contained in the letters of Mr. Hicks, and successfully combated his conclusions, each of Mr. MacCord's teeming with expressions of dignified criticism, of disappointment, and regret at the indifference manifested by his Government's inaction for years, while the unofficial character of the letter of January 14, 1892, is made clear by the fact that its contents were never made known to the Peruvian Government or the foreign office, and was fully explained by his letter to Secretary Gresham in October, 1893, virtually withdrawing the one of January 14, 1892.

That nothing is found in the action of the Government of Peru since the inhuman treatment of Mr. MacCord in June, 1895, to in any way atone for the inhumanity charged and never denied. The Government authorities in control of the railways afterwards directed General San Roman to remove Mr. MacCord from the superintendency of the same, which he enjoyed at a salary of \$10,000 per annum. He was again, in the summer of 1888, made the victim of Peruvian persecution by the authorities at Arequipa, confined and imprisoned in his own office for five days, so confined for twenty-seven hours without food or water, for the avowed purpose of compelling him to pay the sum of \$3,000 for taxes levied on the railway company by the Government authorities, although Mr. MacCord was neither stockholder nor director in said railway company, his connection with it having ceased some time before.

On the 20th of September, 1888, the house of Mr. John Thorndike, the president of the railways of American construction, in which was established the United States consular agency, was taken possession of by armed soldiers, the consulate closed, the shield taken down, and the business of the consular agent suspended for weeks, which incline the committee to the opinion that the Peruvian authorities were emboldened by the unchallenged act of its maltreatment of Mr. MacCord in June, 1885, to the commission of this offense in 1888.

Your committee are of the opinion that, upon the facts and circumstances of this case as disclosed by the official correspondence, the

United States should continue its investigation and efforts in this matter to the end that such an adjustment of the same may be made as may be warranted by the facts in the case and by the law thereto applicable. They therefore submit the accompanying resolution:

*Be it resolved*, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of the claim of Victor Hugo Maccord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto.

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[See Claims against Great Britain, Gen. Index.]

**FIFTY-FOURTH CONGRESS, FIRST SESSION.**

**May 13, 1896.**

[Senate Report No. 934.]

Mr. Lodge, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the message from the President of the United States in connection with the claims of B. R. Henry and other American citizens for compensation for certain lands alleged to have been owned by them and claimed to have been appropriated by the British Government (Senate Document No. 126, Fifty-fourth Congress, first session), report as follows:

A careful examination of the report of the special agent of the Department of State to investigate claims of American citizens to lands in Fiji, accompanying Senate Document No. 126, above mentioned, seems to establish that B. R. Henry and other American citizens were owners of valuable tracts of land in the Fiji Islands, obtained from the natives before the annexation of the islands to Great Britain in 1874; that titles to these lands were fairly acquired, and the purchasers took possession and cultivated a portion of the land and also used it for stock raising; that when the said islands were ceded to Great Britain by King Cacobau (Thakambau) and the Fiji chiefs, the articles of cession contained a provision for the protection of the land titles of the white purchasers or foreigners prior to the cession of the islands. It further appears that soon after the annexation a land commission, consisting of several administrative officers, was established by the colonial governor; that the land claims of American citizens were investigated by these commissioners and either allowed or rejected, as they saw fit; that the findings of these commissioners were subject only to review by the governor in council—that is, by him and the same commissioners sitting as a sort of “court of appeal;” that the decisions of the governor and council were final, the right to appeal to a court of law being expressly denied.

It further appears that the claims passed upon and rejected by the land commissioners and governor and council were decided in violation of article 4 of the annexation treaty. It also further appears, according to the report of the said special agent of the State Department and the published diplomatic correspondence between the Governments of Great Britain and Germany, that the claims of German subjects to lands in Fiji, which were acquired in the same manner, from the same sources, and under similar circumstances as the lands of the American claimants, have been reconsidered and settled by a joint commission selected by the two Governments, and that in those cases where it was not convenient to give a crown grant for the land claimed, a money consideration was awarded and paid. The final report of the joint commission to examine the Fiji land claims of German citizens shows clearly

that the principles applied and the decisions arrived at by the colonial land commissioners and the governor and council were in violation of the annexation treaty, and that claims disallowed under and by virtue of such decisions should be compensated for in money, or crown grants for the land should be awarded.

The claims of said Henry and others are for lands which were of great value at the time when the claims were disallowed and crown grants refused. Your committee are therefore of the opinion that, upon all the facts and circumstances of these claims, as disclosed by the official report of the special agent of the Department of State, the United States should continue its investigation and efforts in this matter, to the end that such an adjustment of the aforesaid claims may be made as may be warranted by the facts in the case and by the law thereto applicable. They therefore submit the accompanying resolution:

*Resolved*, That the President is hereby requested to continue the investigation and efforts hitherto made by the United States in the matter of the claims of B. R. Henry and other American citizens against the Government of Great Britain in regard to certain lands in the Fiji Islands, to the end that such an adjustment of such claims may be made as may be warranted by the facts and by the law applicable thereto.

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[See p. 162.]

#### FIFTY-FOURTH CONGRESS, FIRST SESSION.

May 20, 1896.

[Senate Report No. 1001.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report, to accompany Senate resolution of December 18, 1895, calling for copies of all papers and correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa of Victor H. MacCord.

The Committee on Foreign Relations, to whom was referred the message of the President, dated January 10, 1896, relating to the arrest and imprisonment at Arequipa, Peru, of Victor H. MacCord, respectfully report:

This case received full and careful consideration by the committee at the third session of the Fifty-third Congress, and the report then made, and appended hereto, marked Exhibit B, is hereby affirmed and made a part of this report.

The message of the President of the United States, transmitting, in response to Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying correspondence, is also hereto appended, marked Exhibit A, and made a part of this report.

The accompanying resolution is respectfully submitted and its passage recommended:

*Be it resolved*, That the President is hereby requested to continue the investigation and efforts hereto made by the United States in the matter of the claim of Victor Hugo MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto.

[EXHIBIT A.—Senate Document No. 64, Fifty-fourth Congress, first session.]

[Message from the President of the United States, transmitting, in response to Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying correspondence in relation to arrest and imprisonment of Victor Hugo MacCord at Arequipa, Peru.]

*To the Senate of the United States:*

I transmit herewith, in response to the Senate resolution of December 18, 1895, addressed to the Secretary of State, a report of that officer, with the accompanying

correspondence, in relation to the arrest and imprisonment of Victor Hugo MacCord at Arequipa, Peru, requested by said resolution.

GROVER CLEVELAND.

EXECUTIVE MANSION,  
Washington, January 10, 1896.

THE PRESIDENT:

The undersigned, Secretary of State, having received a resolution passed in the Senate of the United States on the 18th of December, 1895, in the following words:

"Resolved, That the Secretary of State be, and is hereby, requested to furnish for the use of the Senate copies of all papers, correspondence, diplomatic or otherwise, on file in the State Department in connection with the arrest and imprisonment at Arequipa, Peru, of Victor H. MacCord, a citizen of Linesville, Crawford County, Pa., in June, 1895 (1885), he being at the time consular agent of the United States in Peru, if any have been received by the State Department since the consideration of those transmitted to the Senate by the President December 6, 1894, and the consideration of the same by the Senate Committee on Foreign Relations, and its report to the Senate February 14, 1895, upon the subject, accompanied by the following resolution:

"Resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of Victor Hugo MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case and by the law applicable thereto."

has the honor to lay before the President a report covering the subject of said resolution, with the correspondence therein requested, to the end that, if in the President's judgment it be not incompatible with the public interest, the same be transmitted to the Senate in response to the foregoing resolution.

Respectfully submitted.

RICHARD OLNEY.

DEPARTMENT OF STATE,  
Washington, D. C., January 10, 1896.

WASHINGTON CITY, January 15, 1895.

SIR: In Fifty-third Congress, third session, Senate Ex. Doc. No. 4, on page 17, an error of the printer occurs in the postscript, giving the date of the same September 11, 1894, instead of 1888, and this note is addressed to ask an official note making the correction.

Also to request a copy of the letter of Secretary Bayard to Hon. J. D. Cameron under date of March 22, 1886, touching the MacCord matter.

I have the honor to be, etc.,

S. NEWTON PETTIS,  
516 Thirteenth Street NW.

Hon. W. Q. GRESHAM,  
Secretary of State.

DEPARTMENT OF STATE,  
Washington, February 1, 1895.

SIR: I have to acknowledge the receipt of your letter of the 15th ultimo, and, in compliance with its request, to inclose herewith copy of the letter addressed by Secretary of State Thomas F. Bayard to Hon. J. D. Cameron on March 22, 1886, touching the case of Mr. V. H. MacCord.

Referring to Senate Ex. Doc. No. 4, Fifty-third Congress, third session, I have to inform you that the postscript signed by Charles W. Buck, which appears on page 17 thereof, is in the original dated September 11, 1888, and not September 11, 1894, as erroneously printed.

I am, sir, your obedient servant,

EDWIN F. UHL,  
Acting Secretary.

S. NEWTON PETTIS, Esq.,  
516 Thirteenth Street NW., Washington, D. C.

DEPARTMENT OF STATE,  
Washington, March 22, 1886.

"DEAR SIR: Upon examination of the files of this Department in relation to the alleged outrage upon Mr. V. H. MacCord, a citizen of Pennsylvania, which, according to the newspaper slip left by you in my hands to-day, occurred in Peru in June last, I find that the matter was brought to the attention of Mr. Buck, our minister at Lima, and that he made proper examination of the case.

"Mr. Buck reports to this Department that the circumstances referred to transpired previous to his arrival in Peru, but that no protest or complaint from Mr. MacCord was found upon the records of the legation, nor has any been since received. He further reports that Peru was at the time referred to by Mr. MacCord in a condition of armed revolution, in which the varying fortunes of war inflicted losses upon all property owners in that region. The prefect, Manuel San Roman, who is charged by Mr. MacCord with the responsibility for his alleged injuries, was a colonel in the Peruvian army and a revolutionary chieftain. The liability of the Government of Peru for such injuries as Mr. MacCord complains of does not appear from anything except the newspaper communication of July last which you handed me to-day, and which, it seems, had previously been sent to the United States minister. Under the circumstances, no sufficient ground appears as yet for further action by this Department.

"I have the honor to be, sir, your obedient servant,

"T. F. BAYARD.

"Hon. J. D. CAMERON,  
"United States Senate."

WASHINGTON, March 30, 1895.

SIR: I have the honor to inclose to you a letter just received from Victor H. MacCord, dated February 14, 1895, written upon the morning he received the printed correspondence sent to the Senate by you in answer to the Senate's call last July, and to which your attention is respectfully invited. Such letter, by a singular coincidence, bears the same date, written at Arequipa, Peru, that the report of the Committee on Foreign Relations was made to the Senate and ordered to be printed, viz, February 14, 1895, submitting the following resolution:

"Be it resolved, That the President is hereby requested to continue the investigation and efforts heretofore made by the United States in the matter of the claim of Victor H. MacCord, a citizen of the United States, against the Government of Peru, to the end that such an adjustment of said claim may be made as may be warranted by the facts in the case by the law applicable thereto."

You will observe that Mr. MacCord states that the note of Mr. Ribrego to Mr. Hicks of February 15, 1893, as printed in the correspondence, "is entirely new to me, and also false from beginning to end, with the exception, perhaps, of a few clauses purposely arranged to confuse." Its powder had all been burnt in 1888 in the diplomatic notes that passed between Mr. Buck and Mr. Alzamora, the ministers representing the two Governments, running from August to November of that year, consisting of: Mr. Buck to Mr. Alzamora, August 6, 1888; Mr. Alzamora to Mr. Buck, August 28, 1888; Mr. Buck to Mr. Alzamora, September 3, 1888; Mr. Alzamora to Mr. Buck, November 6, 1888; Mr. Buck to Mr. Alzamora, November 14, 1888. To the last, Mr. Buck to Mr. Alzamora, of November 14, 1888, Mr. Alzamora never made answer, but three months later, as Mr. Buck was leaving Peru, soon to be succeeded by Mr. Hicks, the then minister of foreign affairs, the successor of Mr. Alzamora, called the matter up before Mr. Buck and requested him to say to his Government on his arrival home that Peru was anxious to settle the MacCord matter.

Before Mr. Buck reached the United States Mr. Blaine had been installed in office, succeeding Mr. Bayard, but no opportunity was given him to call the attention of the Department to the case.

No action was had by the State Department for three years, and when, November 6, 1891, Mr. Blaine, in answer to a note from Mr. Hicks, dated October 5, 1891, asking for a reason to be given MacCord for not considering his case, declined "to volunteer explanations with reference to its action," condescended to permit Mr. Hicks to ask the foreign office on December 2, 1891, to reply to Mr. Buck's of November 14, 1888, after three years' refusal by Peru to make answer and the inattention of the State Department for the same length of time.

On February 18, 1893, Mr. Hicks, in his note to Mr. Foster, inclosing Mr. Ribrego's, dated February 15, 1893 (which, Mr. MacCord says, is false from beginning to end), says to Mr. Foster "is in reply to his of December 2, 1891, and as it was not immediately answered, he wrote twice more afterwards, and personally on not less than six different occasions brought the matter to the attention of the foreign office."

There was no occasion for the letter of Mr. Hicks to the foreign office December 2, 1891, inasmuch as the whole subject had been discussed by the ministers of the two Governments in 1888, and as Mr. Alzamora declined a reply to Mr. Buck's unanswered note of November 14, 1888; and the request that in three months followed by the minister of the foreign office calling the matter up before Mr. Buck and requesting him to express to his Government on his return home Peru's desire to settle the MacCord claim plainly indicated that nothing remained to be done but to ascertain the amount of indemnity the Governments could agree upon. No other conclusion can be drawn from the existence of such a state of facts, viz:

August 6, 1888, Mr. Buck informed Minister Alzamora that he was directed by his Government to present the claim of Mr. MacCord, inclosing MacCord's protest of June 16, 1885, making known the unlawful acts complained of, and stating "that Mr. MacCord had assigned satisfactory reasons for not having before presented his claim for the official cognizance of his Government," and "requesting an explanation."

Three weeks after, August 28, 1888, Mr. Alzamora replied:

First. "That his Government never had any knowledge of the facts in the protest contained, and that the long time transpired since the protest is dated, June 16, 1885, it would not be in his Government's power to satisfy itself of the truthfulness of such statements."

Second. "That no matter what the realities of the facts are Mr. MacCord has no other course but to prosecute judicially the authors of the acts to which he refers."

Six days after, September 3, 1888, Mr. Buck submitted an exhaustive reply, covering the entire diplomatic ground involved, and among other things stated that—

"The outrages perpetrated against Mr. MacCord in June, 1885, were of general notoriety at the time and of such a character as excited general indignation among foreign residents in Arequipa to an extent that elicited their united action in remonstrance and in a demand for a legal trial, which, in violation of treaty and legal guaranties, was not accorded."

"That there is no statute of limitations to international claims nor presumption of payment or settlement; that I apprehend judgment upon the question of delay in the matter is solely within the discretion of the United States."

Two months later Mr. Alzamora, under date of November 6, 1888, in reply to Mr. Buck, abandoned the position assumed in his note of August 28, 1888, and "considered the fine imposed by Prefect San Roman emanating from legitimate authority, as it frankly so declares, and for that reason it has resolved to study the case of MacCord," and then adroitly sought by evasion to avoid accountability for the arrest, imprisonment, inhuman and brutal treatment of MacCord, a United States consul, by asserting that "the fine was not imposed upon MacCord individually, but on the railroad," as if blood money levied against a corporation in defiance of all law by a rebel in arms against a constitutional government of the realm could be with impunity, and then in 1888 foolishly insinuating, without an iota of evidence in its support, that MacCord had disobeyed Roman's orders, while the correspondence is replete with evidence that he obeyed every order given by Roman, and directed their execution from his cell in prison, addressed to the proper employee.

One week later, November 14, 1888, Mr. Buck replied to Mr. Alzamora, expressing gratification at Mr. Alzamora's receding from the two propositions taken by him—first, "the delay in presenting the claim;" second, "that the Government of Peru was not responsible for the acts of General Roman"—and then by way of refutation of Mr. Alzamora's statement in his note of August 28, 1888, that "his Government never had knowledge of the facts alleged by MacCord as set forth in his protest, and that in consequence of the great lapse of time since 1885 it would not be in its power to ascertain their truth," Mr. Buck informed him that he had just then, November 14, 1888, "received advices that the said prefect, San Roman, on December 8, 1886, solicited approval of his proceedings referred to against Mr. MacCord, which the Government granted without even notice to or a hearing from him under date of December 15, 1886, of which Mr. MacCord was informed by official note dated December 22, 1886," and adding, "I conceive there remains now no question as to the responsibility of the Peruvian Government for the indicated acts, according as their true nature may be demonstrated," and then entering upon an elaborate and eminently clear discussion of the facts in the case, from which I extract the following:

"These facts alleged by MacCord, and proved before the English vice-consul over his signature, and those of the said some thirty-nine consular officers and other persons in Arequipa, I do not understand your excellency to controvert."

"The same signatures attest that 'the running away of the engine was due to the perfidy of the engineer and the carelessness of the officer and troops placed in charge of it by the said Colonel San Roman, there being absolutely no blame attachable to any employee of the railroad except the engineer who ran away.'"

"The statement of said protest and numerous signed certificate, quite contrary then to the views expressed by your excellency, seem to show that Mr. MacCord was not responsible for the flight of the engineer with the locomotive to the Iglesias forces, but that circumstance resulted from the negligence or fault of Colonel San Roman's own forces that had been placed in charge of said locomotive."

"But even if the question of the fine be put to one side for the present, which, however, I can not admit can be done, over and above that remains, apparently uncontroverted, the wrong and violence committed against Mr. MacCord's person in disregard of all right, and, as I understand, of Peruvian laws themselves, and in plain violation of treaty guaranties; hence, whether the fine was imposed on him personally or upon him as the representative of the railroad, and whether or not charged on the railroad's books and afterwards discounted, Mr. MacCord has independently

his claim against the Government of Peru for proper reparation as to the wrongs committed against himself.

"I have just received from the Department of State at Washington a copy of Mr. MacCord's memorial to his own Government, in which he states his claim for indemnity against that of Peru, for treatment complained of, at \$200,000."

The only answer Mr. Buck ever received to such note of November 14, 1888, was a verbal request made by the Peruvian minister as he was leaving for home in the spring of 1889, asking him to say to his Government, on his return, that Peru was anxious to settle the MacCord case, although Mr. MacCord was importuning the State Department, during the years 1889, 1890, and 1891, without any notice being taken of his efforts looking to the prosecution of his claim, except a request of the Department to ask the foreign office for a reply to Mr. Buck's note of November 14, 1888, which resulted in the note from Mr. Ribrego, dated February 15, 1893, that consisted simply of reiteration of Mr. Alzamora's of nearly five years before, and which Mr. Buck in his reply had compelled Mr. Alzamora to recede from every position he had taken, and Mr. Ribrego (in 1893) assumed, while the notice then taken by the American representative at Lima upon the receipt of Mr. Ribrego's note of February 15, 1893, is little if anything less than scandalous to American diplomacy. No wonder that in 1892, while a citizen of Pennsylvania was sojourning in Peru, and the United States was thus represented, he actually passed as an Englishman, for no other reason than that he wished to be awarded the civilities extended to Englishmen, but denied to Americans, citizens of the United States.

I have thus, Mr. Secretary, at some length, briefed the status of this case in all fairness, that you may be saved the labor of wading through correspondence in considering the resolution of the Foreign Relations Committee reported to the Senate on the eve of the adjournment of Congress, which I trust you will consider, although for reasons you will understand was not reached on the Calendar.

I have the honor, etc.,

S. NEWTON PETTIS,  
*Solicitor for Victor H. MacCord.*

Hon. W. Q. GRESHAM,  
*Secretary of State.*

"AREQUIPA, February 14, 1895.

"DEAR SIR: Yours of January 1, inclosing printed document, letters, etc., bearing on my case, is just this morning received.

"Minister Ribrego's note is entirely new to me, and is also false from beginning to end, with the exception perhaps of a few clauses purposely arranged to confuse. It is true that cars were left at Mollendo, as it was materially impossible to bring them all away without sending down engines. This fact was made known to San Roman, who replied that no engines should go down, and that in view of the impossibility of bringing the cars away he would order them to be burned. He did not, however, insist upon that when he knew the engines had all been brought to this city. That there was any plan or agreement between Mr. Thorndike and the Iglesias party in Lima is simply impossible, because we here were directly under the orders of the Caceres authorities, who could and did remove all the engines from the lower division of the road. Why not interrogate Mr. Thorndike on the subject? Also, if thought necessary, let Gen. J. M. Echenique, who was then minister of war of the Iglesias government, be questioned on the subject. He ought to know if there was any understanding with Mr. Thorndike. I am satisfied there could not have been any such understanding, but let it be proven. True, Mr. Garcia y Garcia did send a telegram to Braun saying he had been promised transportation, but that is not proof, and even if it was it could not implicate me, who had, in obedience to orders, retired all the engines from the Mollendo line.

"Let McKensie be questioned as to whether anyone had intimated to him such an action. He is not friendly to me, but I am not afraid to have him testify on the subject.

"I deny that the prefect had any legal right to impose such a fine. Let the Peruvian law be examined on that point. I indignantly deny and brand as false the statement of Sr. Ribrego that I ever conspired against any government in Peru, and I challenge him to present any proof in support of his allegation.

"I never pretended to have paid the fine out of my own private funds. Why should I? Besides, I am claiming not for the fine, but for unlawful, barbarous, and inhuman treatment to which I was subjected, and without the semblance of a trial, to which by law I was entitled.

"In regard to Mr. Cantriaras's statement, I do not see that it has any bearing on my case.

"Mr. Morales only copies an order which I do not deny having received and which was complied with, as far as possible, and the prefect was made aware of the impossibility of bringing away with one engine all the cars from Mollendo, as before stated.

"In regard to Mr. San Roman's affidavit or certificate on page 9, I will only say that I was not, at the time, the legal representative of the railway. I was merely an employee in charge of the traffic department, and Mr. Thorndike, the lessee, had his legal representative in this city. A legal representative, however, was not what was wanted. San Roman wanted some one whom he could with impunity compel to pay a ransom, which, as he himself afterwards confessed to me and to others, 'saved the situation.'

"I notice in one of the letters the minister at Lima is requested to ascertain what is thought of the merits of the claim by disinterested parties residing in Peru. This should be done, and possibly may have been; I do not know, but suspect it has not. Arequipa would seem to be a good point for practicing such an investigation. The case is well known here in all its particulars, as also are both Sr. San Roman and

"Yours, truly,

"V. H. MACCORD.

"Hon. S. NEWTON PETTIS, *Meadville, Pa.*"

WASHINGTON, April 11, 1895.

SIR: After the report in the MacCord case by the Senate Committee on Foreign Relations, Senator Davis, of that committee, suggested that I should see that the Peruvian minister here have a copy of the report made two months ago.

Of course, I took no action in the matter, inasmuch as you were so much burdened by diplomatic complications that I did not wish to annoy you.

By calling upon Mr. Landis, I should be glad if you would, through him, advise me if there would be any impropriety in my mailing a copy to Dr. Yrigoyen.

Yours, very truly,

S. NEWTON PETTIS.

Hon. W. Q. GRESHAM,  
*Secretary of State.*

DEPARTMENT OF STATE,  
*Washington, April 20, 1895.*

SIR: I have to acknowledge the receipt of your letter of the 11th instant, in which you request me to advise you if there would be any impropriety in your mailing to Dr. Yrigoyen, the Peruvian minister in this city, a copy of the report recently made to the Senate by its Committee on Foreign Relations upon the case of Mr. Victor H. MacCord.

In reply, I have to say that this is a matter upon which the Department can not undertake to advise you.

I am, sir, your obedient servant,

W. Q. GRESHAM.

S. NEWTON PETTIS, Esq.,  
*Washington, D. C.*

DEPARTMENT OF STATE,  
*Washington, April 22, 1895.*

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, inclosing a letter addressed to you by Mr. Victor H. MacCord, dated Arequipa, February 14, 1895.

After reviewing at some length the published correspondence in the MacCord case, you express the hope that I will consider the resolution in regard to that case recently reported to the Senate by its Committee on Foreign Relations.

In reply I have to say that the resolution has been considered by this Department, but I do not think it can properly be taken as a basis for further diplomatic action in the case until it has been finally adopted by Congress.

I am, sir, your obedient servant,

ALVEY A. ADEE,  
*Acting Secretary.*

S. NEWTON PETTIS, Esq.

[For Exhibit B, this report, see Senate Report 927, Fifty-third Congress, third session, pp. 164-202.]

[See Claims Against Spain, Gen. Index.]

**FIFTY-FOURTH CONGRESS, SECOND SESSION.**

**February 24, 1897.**

[Senate Report No. 1534.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations submitted the following report and a joint resolution as a substitute for Senate resolution No. 186, relating to the arrest and imprisonment of Julio Sanguily in the island of Cuba. The declaration of the Spanish minister, made conjointly with the minister of the United States on the 12th of January, 1877, is in the following words:

Señor Calderon Collantes declared as follows:

1. No citizen of the United States residing in Spain, her adjacent islands, or her ultramarine possessions, charged with acts of sedition, treason, or conspiracy against the institutions, the public security, the integrity of the territory, or against the supreme Government, or any other crime whatsoever, shall be subject to trial by any exceptional tribunal, but exclusively by the ordinary jurisdiction, except in the case of being captured with arms in hand.

2. Those who, not coming within this last case, may be arrested or imprisoned shall be deemed to have been so arrested or imprisoned by order of the civil authority for the effects of the law of April 17, 1821, even though the arrest or imprisonment shall have been effected by armed force.

3. Those who may be taken with arms in hand and who are therefore comprehended in the exception of the first article shall be tried by ordinary council of war, in conformity with the second article of the hereinbefore-mentioned law; but even in this case the accused shall enjoy for their defense the guarantees embodied in the aforesaid law of April 17, 1821.

4. In consequence whereof, as well in the cases mentioned in the third paragraph as in those of the second, the parties accused are allowed to name attorneys and advocates, who shall have access to them at suitable times; they shall be furnished in due season with a copy of accusation and a list of witnesses for the prosecution, which latter shall be examined before the presumed criminal, his attorney, and advocate, in conformity with the provisions of articles 20 to 31 of the said law; they shall have right to compel the witnesses of whom they desire to avail themselves to appear and give testimony or to do it by means of depositions; they shall present such evidence as they may judge proper; and they shall be permitted to be present and to make their defense, in public trial, orally or in writing, by themselves or by means of their counsel.

5. The sentence pronounced shall be referred to the audiencia of the judicial district, or to the Captain-General, according as the trial may have taken place before the ordinary judge or before the council of war, in conformity also with what is prescribed in the above-mentioned law.

By the law of April 17, 1821, this audiencia shall consist of six judges.

The foregoing agreement makes the Spanish law of April 17, 1821, a part of the treaty between the two Governments, and it is fully obligatory.

This agreement was made at the close of the revolutionary struggle in Cuba which lasted from 1868 to 1878, when it closed with the agreement of Zanjon.

It was made necessary by many events that had involved the summary execution of citizens of the United States during that struggle, and especial care was taken to make the provisions of the agreement specific and clear.

During the present hostilities in the island of Cuba this declaration of the Spanish Government has been frequently called to the attention of the Spanish authorities in Cuba, in the effort to secure the benefit of its stipulations in favor of citizens of the United States who, without being found with arms in their hands, have been arrested, imprisoned, tried, and condemned by summary proceedings of courts-martial for alleged offenses, in gross violation of our treaty rights. The progress of the case of Julio Sanguilý, a citizen of the United States, is characterized with the deliberate perversion of justice and with persistent disregard of these engagements.

Our consul-general, Fitzhugh Lee, in a letter to the Department of State dated January 6, 1897, thus describes Julio Sanguilý and his condition and environment:

*Mr. Lee to Mr. Rockhill.*

No. 283.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, December 31, 1896. (Received January 6, 1897.)*

SIR: Yesterday noon I visited the Cabañas fort and had a talk with Mr. Julio Sanguilý, an American citizen, and formerly a general in the insurgent army. As you know, he was arrested in his house while taking a bath on the 24th of February, 1895.

Sanguilý had proved himself a very brave and efficient officer in the Cuban war from 1868 to 1878, and had been wounded seven times. It was therefore naturally supposed that sooner or later he would have joined the insurgent side of the war now in progress in this island. He had, so far as I am informed, committed no overt act in that direction, and was taken without arms in hand.

On the 28th of November, 1895, or, say, nine months and four days after he was arrested and thrown into a cell at the Cabañas fort, he was tried and sentenced to be imprisoned for life. An appeal was taken to the supreme court of justice at Madrid, which decreed, upon some technical ground, that Sanguilý should be retried.

On the 21st of December, 1896, his second trial commenced, and ended by his being again sentenced to perpetual imprisonment.

From this second sentence an appeal has been taken, which, whether successful or not, will greatly lengthen the time he has already passed in his cell.

The lawyer who defended this prisoner in his first trial now looks from the bars of a cell adjoining his in the Cabañas fort, and I am informed that the lawyer who managed his appeal before the Madrid court has suffered in consequence thereof, so that it may be difficult to procure in Madrid another person versed in the law who will consent to manage for Sanguilý the appeal proceedings.

Only a few days after the arrest of Sanguilý a proclamation was issued offering amnesty to all persons in arms who would give themselves up. It seems that this ought to apply to persons who had been arrested without arms in hand. Two other Cuban officers of distinction—Ramon Perez Trujillo and José Maria Timoteo Aguirr—were arrested, I am told, at the same time as Sanguilý and for the same reason, namely, because it was thought that they would engage in the war. After a short incarceration they were liberated.

In view of all these facts, and for the additional reason that Sanguilý has been in a cell twenty-three months to date, is not in good health, and is suffering from old wounds, I respectfully suggest that the Department bring these facts to the notice of the Madrid Government and ask that instructions be issued that he be released from prison on the condition that he will leave this island and not return until the present war has terminated.

I am, sir, etc.,

FITZHUGH LEE, *Consul-General.*

It is only just and in accord with the well-established opinions of mankind to attribute to a man who has exhibited high courage and devotion to honorable duties—of which his many wounds are eloquent

witnesses in behalf of Mr. Sanguiy—a due sense of obedience to whatever obligations he has voluntarily assumed toward the United States with reference to Spain, under his petition and oath of naturalization, until the contrary is made to appear. In this instance there is no evidence or suggestion growing out of the facts of the case that Mr. Sanguiy has manifested toward the Spanish authority in Cuba any hostility, ill feeling, or want of due respect for and obedience to the laws.

In all respects he has been true to his duty to the United States while residing in Cuba, his native country, under the passport and registry of the United States and also of Cuba, and the only ground of proceeding against him in Cuba has been an unjust suspicion, derived from the honorable and devotional courage he exhibited in his efforts to free Cuba from Spanish dominion in the former revolution that ended nearly twenty years ago. During more than eighteen years of that period he has resided in Cuba, striving, peacefully and laboriously, to raise and provide for his family until now he is an old and feeble man, and is still suffering from severe wounds received in battle.

The whole record of the two prosecutions against this worthy man, first for rebellion and then for kidnaping, as far as our Government has been able to obtain it, after most industrious and urgent efforts, is set forth in Executive Document No. 104, Fifty-fourth Congress, second session, which is appended to this report.

The Spanish authorities in Cuba have artfully, and contrary to our rights as a treaty power, concealed from the Government of the United States much of the actual record of the proceedings against Sanguiy in these two prosecutions. This has been done, notwithstanding frequent urgent and just demands of our Government for full information as to such proceedings. This demand was the more necessary and imperative because the proceedings as to the more important parts were conducted in secret, were inquisitorial, were compulsory, and were under conduct of a court-martial; all of which procedure is in violation of Spanish law and of our treaty rights as they are declared by Spain in the protocol of January 12, 1877.

The facts, so far as our Government has been able to develop them, partly from official correspondence with the Spanish authorities in Cuba and partly from newspapers in Cuba that are recognized as official organs, show a deliberate purpose to persecute an innocent man, through the use of the tribunals and under the forms of law, first, by long delays in such proceedings in order to protract his sufferings in prison, and then by suddenly putting him on trial without the benefit of witnesses to establish his innocence.

Sanguiy was registered in Cuba as an American citizen, on the 22d of August, 1878, on a passport issued by the United States on the 7th of August, 1878. He then resided in Habana until his arrest on the 24th of February, 1895—nearly seventeen years. That was the day the revolution broke out, and he was 300 miles from the locality of its origin. He was arrested in his house, where his family resided, at 7.30 a. m., while taking a bath.

No arms were in his house, and he was alone with his family.

He was arrested by the military and held in secret confinement to answer to a court-martial. A military officer subjected him to an inquisitorial examination at 11 o'clock at night, without the presence of witnesses or counsel.

On the 16th of March, upon the request of our consul, his case was ordered to be transferred into a civil court for further proceedings.

On the 24th of April, 1895, Sanguiy was again prosecuted, while in

prison, on a charge of kidnaping, before a military court. On the 25th of April our consul again protested against this new violation of our treaty with Spain. (See letters on pp. 12 and 79.) Under this last charge he was put in solitary confinement, as he had been under the first. The kidnaping case was ordered to be sent to the civil court on May 7.

On May 21 the Department of State formally protested against the exercise of military jurisdiction in the preliminary stages of the civil trial (p. 17), and has firmly adhered to that position. On the 25th of May Vice Consul Springer made formal protest against military proceedings in the further prosecution of Sanguiely (see p. 19 of appendix), and demanded that his imprisonment "cease forthwith," and that he be given speedy trial before the civil courts.

Bail was refused Sanguiely to release him from prison, but he was required to give security for the costs of the proceedings in the sum of \$10,000 in the case for insurrection and, in addition, \$20,000 in the case for kidnaping, to save his property from confiscation to pay the costs. Every step taken in the case thus trumped up against him only added to the burden of his wrongs and made his deliverance more hopeless.

The kidnaping case, without the color of support in law or fact, was held over him until the 24th of April, 1896, when it was quashed.

Sanguiely had then been convicted of rebellion; and the judgment was reversed by the supreme court at Madrid on the 3d of October, 1896. The evident purpose was to multiply prosecutions against him, in order to hold him in prison, if he should be acquitted on either of them, for trial on the next proceeding.

Each of the prosecutions was begun before a military court, in which the accused is subject to secret inquisitorial examination, and when it was transferred to the civil court it carried into that tribunal the record of the summary and secret proceedings of the court-martial. On the 21st of May, 1895, Mr. Uhl instructed Consul Springer, in the most decided terms, that the military arm had no judicial cognizance over our citizens at any stage of the proceeding. (See p. 17.)

Every power of protest and petition, even of supplication, was used by our Government to induce Spanish authorities in Cuba to give Sanguiely a speedy trial, according to our treaty with Spain, only to be met with duplicity, delay, and denial. On the 2d of October, 1895, the trial of Sanguiely was set for the 28th, but the charges against him were not shown to his counsel until October 18—ten days before the trial.

The evidence to prove the guilt of Sanguiely, on the trial and in his defense, is officially stated in a dispatch of Consul-General Williams to Mr. Uhl, dated December 7, 1896, in which he says:

Accompanying herewith are two copies of the *Diario de la Marina* of 29th and 30th of November, and 3d instant; also two copies of the discussion published in supplement, both newspapers giving full report of the proceedings as they actually occurred during the trials.

All the testimony offered on the trial is thus stated in the copy of the *Diario de la Marina* sent to Mr. Uhl:

[Telegram.]

*Mr. Williams to Mr. Uhl.*

HABANA, November 29, 1895.

Trial of Sanguiely commenced yesterday noon; adjourned at 5 o'clock; resumed to-day noon and finished at 3 o'clock. I attended as spectator in compliance with instructions of Department. His advocate, Viondi, has made a magnificent defense. Verdict not rendered yet.

[Telegram.]

*Mr. Williams to Mr. Uhl.*

HABANA, December 3, 1895.

Superior court of Habana sentenced Sanguiy yesterday to imprisonment for life.

*Mr. Williams to Mr. Uhl.*

No. 2677.]

UNITED STATES CONSULATE-GENERAL,  
Habana, December 7, 1895.

SIR: I have the honor to report that in accordance with the Department's instruction No. 1180 of the 14th ultimo I attended as a spectator the trial of the American citizen Mr. Julio Sanguiy, which took place in this city on the 28th and 29th ultimo before the superior court of the province of Habana.

The court opened at 12 o'clock noon of the 28th ultimo, and on the entrance and seating of the accused the prosecuting attorney addressed his charges against him to the five sitting judges, the chief justice presiding, and on conclusion asked the court to declare Sanguiy guilty, with sentence of imprisonment for life with chain. The charges summed up by the prosecutor and developed at the trial against Sanguiy are in no wise materially different in essence from those transmitted to the Department in my dispatch No. 2727, of the 19th of October last.

The advocate for the prisoner, Mr. Miguel F. Viondi, followed in an earnest and eloquent defense, asking the court to declare the innocence and release of Sanguiy on the grounds:

(1) The absence of evidence to criminate.

(2) The present trial being a continuation of the court-martial proceedings commenced on the 24th of February last, the day of the arrest of Sanguiy, and against which this consulate-general protested, by order of the Department, before the Governor-General, on the 25th of April last, because said military proceedings were in violation of the protocol of the 12th of January, 1877.

(3) Claiming that the case of Sanguiy comes under the proclamation of the Governor-General, published in the Gazette of February 27th of the present year, granting pardon to the rebels presenting themselves to the nearest municipal authorities, a translation of which proclamation I sent to the Department with my dispatch No. 2428, of that same date.

I understand that Mr. Viondi has determined to carry the case on appeal to the supreme court of Spain at Madrid. Accompanying herewith are two copies of the *Diario de la Marina* of the 29th and 30th of November and 3d instant, also two copies of the *Discussion*, published in supplement, both newspapers giving full report of the proceedings as they actually occurred during the trials.

The current business of this office requiring my constant attention prevents me from devoting time to the translation of either of these reports.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

[From the *Diario de la Marina*, Habana, Friday, November 29, 1895.]

#### THE SANGUILY CASE—PUBLIC EXAMINATION OF WITNESSES.

According to our previous announcement, the public examination of witnesses in the case of the Government against Don Julio Sanguiy y Garit, charged with the crime of rebellion, was commenced yesterday, the said case having previously been before the court of first instance.

At an early hour in the morning an immense crowd occupied the galleries of the court room, and it increased until it was found necessary to keep it back by force. At half past 10 Mr. Sanguiy arrived, under the escort of a picket of custodians of public order. He remained in the room set apart for prisoners until half past 12, when he was summoned to sit on the bench in the court room which is occupied by accused persons. Don Miguel F. Viondi, his counsel, and Attorney Luis P. Valdés were then likewise summoned.

The gentlemen of the press, who occupied their respective places, were then summoned by the doorkeeper; and here an unfortunate incident occurred. \* \* \* All who thought proper to do so sat down at the table intended for the "fourth power of the State," which is certainly small enough, and neither the doorkeepers nor the policemen required anyone to present a permit to occupy that place, the result of

which was that the shorthand reporter of the *Diario de la Marina*, our collaborator, Mr. Vera y Gonzalez, was obliged to work in the midst of the public throughout the session. Consequently our report can not be quite as extensive as might be desirable.

In the locality occupied by the civil court, the third section of the criminal court sat, the court consisting of the gentlemen to whom we referred yesterday. Among those present were the United States consul and many magistrates and lawyers. Quite a number of prominent ladies were likewise present.

## DOCUMENTARY EVIDENCE.

Don Manuel Ramón Hernández, one of the court officers, acted as secretary and read the argument prepared by the Government attorney, and the defense, to which we referred in our edition of yesterday evening, and the documentary evidence offered by both parties and accepted by the court.

## CONFESSION OF THE PRISONER.

Don Julio Sanguil y Garit, the prisoner, whose attitude was one of perfect serenity, said, in reply to the usual preliminary questions, that he was a native of Habana, 46 years of age, married, and the father of a family; by occupation a clerk, and that he had been a citizen of the United States since the year 1889. He was arrested on the 24th of February of the present year, between 7 and a quarter past 7 in the morning.

In reply to a question of the Government attorney, he said that, although it was true that on previous occasions—that is to say, before the rising took place—he had spoken of political matters with various persons, and had received, among other visits, that of Mr. Lopez Coloma, with whom he had spoken somewhat of Cuban affairs, he was in no way concerned in the uprising, and had nothing whatever to do with it.

GOVERNMENT ATTORNEY. Could you not state anything more? Could you not tell what sort of a reference you made to Cuban affairs, and whether you were requested to head the movement in Habana, Matanzas, and Santa Clara?

PRISONER. I was, indeed, invited to head the movement, if I am not mistaken, but that was several days before. I do not remember exactly when.

GOVERNMENT ATTORNEY. What sort of a movement was it?

A. The revolutionary movement which began on the 24th of February, and which still continues.

Q. Did Mr. Lopez Coloma speak to you in his own name or in that of other persons?—A. He spoke to me both in his own name and in that of other persons.

Q. And what did you say?—A. That I could not do it.

Q. When did you make your first statement before the military court?—A. On the 23d of February, at 11 p. m.

Q. What statement did you make with regard to the movement?—A. I told what I knew.

Q. But did you not state that, owing to its political significance, you might be compelled to take part in it?—A. I do not remember what I said. I asserted that there was no movement.

Sanguily's counsel here objected to these questions by the Government attorney and referred to the statements already made by the prisoner.

As the presiding judge considered that the questions of the Government attorney were pertinent, the prisoner's counsel declared that he protested, notwithstanding that the presiding judge stated that a protest is proper only when the court refuses to permit a question, and the protest is put on record in order that an appeal for disregard of forms may subsequently be taken, which in the present case is of no practical importance.

The Government attorney continued to question the prisoner as to whether he had addressed letters relative to the movement to various persons and issued appointments as officers, among them an appointment as colonel. The prisoner said that he had not.

Q. (By the GOVERNMENT ATTORNEY.) Do you not remember that you attended a number of meetings on a sugar estate at which these matters were discussed?—A. I do not remember. I had nothing to do with the movement; I have kept entirely aloof from it.

Q. Were you in New York in the year 1893?—A. I have not been there since 1878.

Q. Have you no relations there with persons who have been concerned in these matters?—A. I have, it is true, some friends to whom I was in the habit of writing.

Q. Have those letters anything to do with the movement?—A. Nothing whatever.

The prisoner was then asked whether he recognized some fragments of a letter which was on file as being in his handwriting. After carefully examining them, he said that he did not.

Q. Is the handwriting like yours?—A. I think it is different.

Q. Do you know the writing?—A. (Again examining it carefully.) I do not know it.

Q. Do you recognize that letter on file among the records of this court as having been written by you [referring to a letter addressed by the prisoner to Dr. Betancourt]?—A. (Examining it with care.) The writing looks like mine, but I do not dare to state positively that it is, for various reasons which I can not state now. It looks like my handwriting, but I do not feel certain that it is.

The PRESIDING JUDGE. Do you know Don José Inocencio Azcuy.—A. No.

Q. Have you never had any relations with him?—A. No.

Q. Have you never addressed a letter to him?—A. I have not.

The prisoner's counsel stated that he did not desire to address any questions to Mr. Sanguiy, and the latter took his seat on the prisoner's bench.

#### THE EXPERTS.

No one but Mr. Biosea appeared for the prosecution. Mr. Biosea compared the signatures of the three letters of the prisoner which were in the possession of the court; he considered them similar, and thought they had been written by the same hand, although he could not positively state that they had.

Messrs. Antonio Pérez Madueño and Pedro Simon Álvarez, the experts for the defense, claimed that the fragments of the letter in the possession of the court, which the Government attorney thought to have been written by Mr. Sanguiy, were of no importance whatever, for the reason that the document was wholly illegible.

The Government attorney questioned them on each particular word in the fragment of a letter which apparently contained the appointment of Mr. Azcuy as an insurgent colonel. The following words were found: Colonel in the army \* \* \* citizen \* \* \* fully author \* \* \* colonel of our \* \* \* you are au \* \* \* appoint \* \* \* cios \* \* \* organize forces \* \* \* which is hoped by yours truly \* \* \* Julio Sanguiy (flourish).

The experts insisted that it was quite impossible for them to make any sense of the detached words of the document, and after several questions by the prisoner's counsel, they withdrew.

#### DON ANTONIO LOPEZ COLOMA.

In reply to the usual preliminary questions, he stated that he was 25 years of age, married, an ex-railroad employee, and that he was connected with the prisoner neither by blood relationship nor by friendship.

He said that he was arrested in the month of March last for having placed himself at the head of an insurgent band at Ibarra on the 24th of February. He declared that he had not instigated that movement and said that he took the place at the head of his men under compulsion, designing to act as an autonomist, and not as a secessionist.

Q. (By the GOVERNMENT ATTORNEY.) Had you previously visited Habana for the purpose of proposing to Sanguiy to assist you?

WITNESS. I had not.

Q. Did you bring oral or written instructions from Dr. Betancourt, which you were to communicate to Juan Gualberto Gómez?—A. I came to receive orders from Sanguiy, Aguirre, and Gómez, but I only saw Gómez, and he merely gave me a letter.

Q. Did you speak to Gómez concerning the uprising?—A. No, sir.

Q. Or with Sanguiy?—A. Nor with Sanguiy either.

At the request of the Government attorney, the clerk of the court read the statement made by the witness at San Severino castle at Matanzas. In that statement Coloma said that Don Pedro Betancourt had commissioned him to call on Sanguiy, Juan Gualberto Gómez, and Aguirre at Habana, with a view to raising the cry of "Hurrah for reform!" The witness was then asked how many interviews he had said at San Severino that he had had with Sanguiy and Aguirre. He answered that he had there stated that he had had none, although he was acquainted with those gentlemen.

Q. How was it that you did not speak to Sanguiy and Aguirre?—A. Because it was believed at Matanzas that Messrs. Sanguiy and Aguirre were opposed to the movement. I consequently saw no one but Juan Gualberto Gómez.

Q. (By PRISONER'S COUNSEL.) Whom did you recognize as leader?—A. Betancourt.

Q. (By the GOVERNMENT ATTORNEY.) Had you no knowledge that Sanguiy was the leader of the movement in Habana?—A. On the contrary, I had heard that Sanguiy disapproved the movement, and as Betancourt wished to make me believe that Sanguiy was with the movement, he spoke to me in rather vague terms.

Q. Did Betancourt tell you that Sanguiy would place himself at the head of the Matanzas forces?—A. He had told me that he expected Sanguiy by the 25th.

Q. (By the PRISONER'S COUNSEL.) Did you believe those statements of Betancourt?—A. I did not think that Sanguiy would join the insurrection.

Q. If Sanguily had gone to join the insurrection, on what day was he to do so?—A. On the 21st.

After a document belonging to the records of the court had been shown to the witness, and after he had ratified all the statements which he had made, he retired.

#### A FEMALE WITNESS.

The next witness was a colored woman employed on the estate Portela, in Aguacate, where the prisoner Sanguily used to go on hunting trips.

PRESIDING JUDGE. Do you swear, before God, that you will tell the truth?

The witness did not answer, although the question was repeated.

The JUDGE. Do you not hear?

WITNESS (terribly frightened). Sir!

She was unable to answer the usual preliminary questions that were addressed to her, and afterwards answered in monosyllables. It was finally elicited that she was an unmarried woman, employed in agricultural labor.

Q. (By the PRESIDING JUDGE.) Did you reside on the estate Portela, in Aguacate, at the close of last year?—A. Yes, sir.

Q. (By the GOVERNMENT ATTORNEY.) Did not Mr. Sanguily occupy a room there, the furniture of which was sold?—A. Yes, sir.

Q. Was there a gun there?—A. Yes, sir.

Q. Do you remember whether the civil guard came there because the furniture was to be sold?—A. Yes, sir.

Q. Was there a closet in that room?—A. Yes, sir.

Q. Who kept the things there?—A. I don't know.

Q. Did you see when the civil guard took some papers?—A. No, sir.

Q. (By the PRESIDING JUDGE.) Do you remember what person spoke to Don Julio Sanguily?—A. I do not remember.

Q. (COUNSEL FOR THE DEFENSE.) When the civil guard came to examine the closet, where were you?—A. At home.

Q. Did you live in the house occupied by the family?—A. No, sir.

Q. And did the civil guard apply to you?—A. Yes, sir.

Q. And did those gentlemen come to see the furniture?—A. Yes, sir.

Q. Did they buy anything?—A. Yes, sir.

Q. Did the commander of the civil guard come there?—A. No, sir.

Q. Did they take leave of you?—A. No, sir.

Q. Did you not see what they took away?—A. I did not notice.

The witness then retired.

#### INSPECTOR TRUJILLO.

After answering the usual preliminary questions, he said that he was acquainted with Sanguily, but that he was neither his friend nor his enemy.

Being questioned with respect to the arrest of Mr. Azcuy, he said that when he arrested him on his landing from a steamer from Key West, he untied his cravat, in which he found a paper, which Azcuy snatched out of his hand, put it in his mouth and chewed it up, so that he was able to secure a part of it with the greatest difficulty, and to take another fragment out of Azcuy's mouth.

The fragments of the letter having been shown to him, he said that they appeared to be the same, and withdrew.

#### DON JOSÉ PAGLIERY.

Mr. Pagliery appeared in court in citizen's clothes, and answered the usual preliminary questions by saying that he was 45 years of age, and a colonel in the civil guard.

The PRESIDING JUDGE. Do you know Mr. Julio Sanguily?—A. I do.

Q. Are you a friend of his?—A. No; but I have had some intercourse with him.

In reply to a question by the Government attorney, he said that Azcuy had never told him who had given him the papers which he carried in his cravat, or who had signed them.

His first statement was read, from which it appeared that he had taken from Azcuy a folded letter which was hidden in his cravat, and that when Azcuy saw that the letter was discovered he tore it in two pieces, which he put into his mouth, but that the witness had succeeded in securing some fragments of chewed paper which, among other things, said: "Habana \* \* \* Mr. José Azcuy \* \* \* by our author \* \* \* to organize forces." It bore Sanguily's signature, and when Azcuy was asked who had given him that paper, he said that it had been given him by his nephew, Dionisio Azcuy.

The JUDGE. Were you chief of police on the 24th of February?—A. Yes, sir.

Q. Were you the person who arrested Don Julio Sanguily?—A. Yes; by order of the Governor-General.

Q. Had you any knowledge that he was conspiring with Betancourt and López Colona at Matanzas?—A. I know, in a general way, that an effort was being made in behalf of secession; everybody knew that.

Q. Did you know that Sanguiy was going to place himself at the head of a band from Matanzas, Ibarra, or any other place?—A. I did not know anything about it; I only knew that there was a conspiracy on foot.

Q. (By the PRISONER'S COUNSEL.) Do you remember that on the 28th day of June last you sent a communication to the court, telling what you knew with regard to Sanguiy's antecedents, and said, "A record of all this must be in the captain-general's office, since the captain-general was informed of the facts; I have no information except common reports, which I am unable to prove?"

The witness answered in the affirmative and withdrew.

DON JOSÉ INOCENCIO AZCUEY.

This gentleman was unable to appear in court, being ill in a hospital. It was at first decided to visit him at the hospital, but finally, the counsel for the defense and the government attorney agreeing, it was concluded to do without his testimony; instead of which his first statement was read, from which it appeared that Mr. Azcúey was 56 years of age, married, and an owner of country real estate.

Being asked as to the appointment of a colonel which was taken from him by Inspector Trujillo (said paper being concealed in his cravat) and whether the injury done to the paper was done by him, he said that on his landing in this port Inspector Trujillo took the paper in question from him; he (witness) was able to keep a part of the paper. As to the purport of the document, he said that as he was the lessee of the estate of Rosario at Linares the appointment of an insurgent colonel, signed by Sanguiy, was sent to him, but he did not know whether the signature was genuine or not, as it was sent to him by the revolutionary junta of New York on the 31st of December, 1894, and was delivered to him by Dionisio Azcúey, his nephew. He conferred, he said, at Tampa, with Mr. Enrique Collazo and entered that whirlpool of secession for the sole purpose of being able to see his son, but that he never could be an insurgent, and that Enrique Collazo confirmed to him the appointment of a colonel.

This declaration was read after those from which we give extracts below. We have, however, preferred to place it here, because it is in the order in which the witnesses were called.

DON RAMÓN SANCHEZ.

Mr. Sanchez answered the usual preliminary questions by stating, among other things, that he was the proprietor of the pawnbroker's shop known as Luz, on the corner of Compostela street. He said that he was a friend of Sanguiy.

The PRESIDING JUDGE. Did Mr. Sanguiy pawn a revolver and a machete in your establishment?—A. I have a kind of an idea that he did, but I can not be positive about it, nor do I remember the date.

Q. About how long ago was it?—A. About a year, a year and a half, or two years. Sanguiy has done business with me at various times.

Q. When the preliminary examination was held, did you remember when Sanguiy pawned those articles?—A. Yes; I did remember then, because the date was not so remote.

Q. (The GOVERNMENT ATTORNEY.) Did you say in your statement that the last transaction had taken place eight months previously, and that Sanguiy had pawned a machete and a revolver? Do you remember whether such was the fact?—A. Yes; I do remember it now.

Q. So that in December—that is to say, eight months before your declaration—Sanguiy pawned a machete and a revolver at your shop?—A. He did.

Q. Do you remember that you said, in the month of October, that Sanguiy had pawned those articles?—A. Yes, sir.

The PRISONER'S COUNSEL. You probably remember the day when the insurrectionary movement began. Do you remember whether Sanguiy had redeemed the machete and the revolver at that time?—A. I can not say positively.

Q. But do you not remember that you sold those articles at public auction?—A. Yes.

COUNSEL. Then it is perfectly evident that he did not redeem them.

The witness then retired.

In reply to a question by the presiding judge, Sanguiy stated that he did not remember the precise date when he pawned the machete and the revolver, although he knew that he did not redeem them.

Don Francisco Regueira, one of those concerned in the uprising at Ibarra, was next summoned to appear as a witness. He did not appear, and it was decided to do without his testimony.

DON LUIS LORET Y MOLA.

This gentleman is a native of Puerto Principe, 21 years of age, unmarried, and a student. He was tried for having taken part in the present uprising, and was pardoned.

COUNSEL FOR THE DEFENSE. Do you know whether, at the time of the uprising of February 24, Sanguiily was in any way concerned in it at Ibarra?—A. I know nothing about it.

Q. Who was your leader?—A. Nobody, except one who was at our head, and that was Coloma.

Q. How many of you were there?—A. Fourteen.

Q. Do you not know whether Sanguiily was to take command of the party?—A. I know nothing at all about it.

Don Paulino Alfonso was then summoned, but did not appear.

DON GERARDO PORTELA.

This gentleman is a native of Habana, 33 years of age, a lawyer, and was tried, together with Sanguiily, in the case of Fernández de Castro.

In reply to a question of the defense, he said that he was tried for kidnaping Fernández de Castro, together with Sanguiily.

COUNSEL FOR THE DEFENSE. Were you tried on the same charges, or on different ones?—A. On the same charges.

Q. For the very same reasons?—A. The very same.

Q. Who tried you?—A. The military authorities. There were many persons tried in that case.

Q. Were you released?—A. Yes, sir.

The witness then withdrew. Mr. Azcuy's statement was then read, and this ended the evidence. The government attorney and the prisoner's counsel were then told that they were at liberty to speak. In our next edition we will give reports of the arguments of both these gentlemen.

The moral and judicial impossibility of a just conviction for crime on such testimony is so manifest that the sense of justice is startled by the fact that such a judgment was rendered against Sanguiily, followed by a sentence of life imprisonment in chains—a most horrible living death. Conceding, if it must be conceded in favor of such flagrant and inhuman cruelty, that Spain has the right under municipal law to thus abuse justice in the condemnation of her own subjects, and that we are bound to submit to this result under the laws of nations in respect of our citizens residing in Cuba, it is still true that this judgment was reached through a flagrant abuse of the treaty rights of the United States, and of Sanguiily, and in open disregard and contempt of these rights.

From the beginning and through its entire extent the trial was contrary to law, and the judgment was contrary to the evidence. In the abuse of its alleged jurisdiction the court openly violated the treaty rights of the United States, and condemned the accused on the mere reports of Spanish officials who were not under oath and were not present at the trial of Sanguiily.

The persistence of the Spanish authorities in the prosecution of American citizens before tribunals, and in a form prohibited by our treaties with Spain, leaves no room for doubt as to their purpose to wholly ignore and disregard them. In the case of the *Competitor* prisoners, who are still held under prosecution before a special marine court-martial, as late as November 26, 1896, Mr. Springer, acting consul-general, sent the following telegram and letter to the Department of State:

*Mr. Springer to Mr. Rockhill.*

HABANA, November 26, 1896.

Am informed that the declarations of *Competitor* prisoners are being taken again by ordinary marine court-martial. Confrontation of the master of the *Competitor* with witnesses day before yesterday lasting five hours. Shall I enter a protest even against preliminary proceedings by the naval authorities or the military authorities?

*Mr. Springer to Mr. Rockhill.*

No. 234.]

UNITED STATES CONSULATE GENERAL,

*Habana, November 26, 1896.*

SIR: I have the honor to confirm the following telegram, transmitted this morning. I understand that these preliminary proceedings are intended as investigatory, the case being in "sumario" (the nearest equivalent of which is taking declarations for a grand-jury indictment). But in the case of Sanguiely the United States declined to recognize the validity of the military jurisdiction in preliminary or at any stage of the proceedings.

I am, etc.,

JOSEPH A. SPRINGER.

The attitude of our Government thus repeatedly stated has only invited a more determined and contemptuous disregard of our treaty rights.

On the 24th of January, 1896, Consul-General Williams telegraphed from Habana to Mr. Uhl, as follows:

The superior court refuses to furnish a certified copy of the proceedings in the trial of Sanguiely.

On the 3d of October, 1896, our minister at Madrid telegraphed the Department of State that the case of Sanguiely had been "remanded for a new trial."

Consul-General Lee says, in a dispatch to Mr. Rockhill, dated October 9, 1896, that "the supreme court at Madrid has remitted his case (Sanguiely's) for retrial, I am informed, on the ground that there was lack of proof to warrant his conviction." These brief allusions furnish the only information we have as to the action taken by the supreme court at Madrid. On the 15th of December, 1896, the following judicial notice appeared in the *Diario de la Marina*:

*Mr. Springer to Mr. Rockhill.*

No. 261.]

UNITED STATES CONSULATE-GENERAL,

*Habana, December 16, 1896. (Received December 21.)*

SIR: I have the honor to transmit herewith, for the information of the Department, the accompanying clippings from the "Judicial notices" of the *Diario de la Marina*, respecting the case of Julio Sanguiely, which is set down for a public hearing (juicio oral) on the 21st instant.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*[Inclosure in No. 261—Translation of clippings from *Diario de la Marina*—Judicial notices.]

## THE CASE OF SANGUILY.

TUESDAY, December 15, 1896.

In the case instituted against Julio Sanguiely y Garit, for the crime of rebellion, part 1 of the criminal court of this superior court (audiencia), in a decree of court, dated yesterday, has ordered that the president of the court be notified to appoint two magistrates, who, with the three who have the cognizance of this case, Messrs. Ricardo Maya, Juan Valdes Pages, and José Novo y García, shall make up the number of five necessary to compose the court upon the day set down for the public hearing.

The same part has also ordered that the accused, Sanguiely, be notified to name an advocate to defend him, in view of the fact that Don Miguel Viondi, who defended him on his previous trial, is now himself in prison; advising him also that should he not do so, or in case the one newly appointed does not accept the charge, the court will name the lawyer in turn corresponding.

WEDNESDAY, December 16, 1896.

In order to complete the full number of five magistrates who are to compose the court on the 21st instant, order for the public hearing (juicio oral) of this case, have also been designated Messrs. Adolfo Astudillo de Guzman and Manuel Vias Ochoteco,

The accused, Sanguily, who was yesterday notified to appoint an advocate to defend him, has begged the court to grant him three days wherein to name one, for the reason that he has not received replies from the lawyers to whom he has applied, and his situation as a prisoner prevents him from making more active efforts in the matter.

Sanguily's counsel was imprisoned at the time of the trial; his witness, Coloma, had been executed, and the case was conducted for him by Mr. Dominques. The lawyer who argued his appeal before the supreme court at Madrid was disbarred and removed from office.

Vice-Consul Springer witnessed the trial and reported the proceedings to our Government on the 24th of December, in the following dispatch:

[Telegram.]

*Mr. Springer to Mr. Rockhill.*

HABANA, December 23, 1896.

(Received December 30, 1896.)

Trial of Sanguily commenced Monday. Finished to-day. Sentence within three days.

*Mr. Springer to Mr. Rockhill.*

No. 271.]

UNITED STATES CONSULATE-GENERAL,

*Habana, December 24, 1896. (Received December 30.)*

SIR: With reference to my dispatch, No. 261, of the 16th instant, respecting the public hearing before part 1 of the criminal court of the audiencia, or superior court of Habana, of the case against Julio Sanguily, an American citizen, charged with rebellion, I have now the honor to confirm my telegram of the 23d instant.

On account of the peculiar antecedents of Sanguily's case, too well known to the Department to require repetition, I attended the trial as a spectator, and found the proceedings of sufficient interest to warrant me in the belief that a report of same, condensed from the published accounts, and as coming under my own observation, may prove of interest to the Department.

The court convened Monday last at 1 o'clock, and before commencing the examination of the evidence the counsel for the defense, Don Antonio Mesa y Dominques, presented a petition to declare the nullity of all the proceedings, as having been prosecuted in violation of the protocol of January 12, 1877, which provides that American citizens shall be subject to trial for the crimes therein mentioned only by the ordinary jurisdiction, except in the case of being captured with arms in hand, and that the proceedings in said cause had been prosecuted by the law of criminal procedure which came into force January 1, 1889, instead of the law mentioned in article 4 of the protocol, and which applied to the present case, set forth in articles 20 to 31 of April 17, 1821, which required trial before six judges, instead of five then present, and for other reasons set forth.

Court took a recess to deliberate upon this point. Upon meeting again the petition was overruled. Defense noted a protest.

Trial continued by reading the findings of the prosecution, which demanded the penalty of chains for life, with costs, and of the defense, which demanded the absolution of the accused for lack of proof of his participation in the crime charged, or, in case of being declared guilty, that he be considered as within the decree of pardon of Governor-General Calleja, of 27th of February, 1895.

The accused was examined and declared his innocence of the present charges against him, but admitted having participated in the insurrection of 1868-1878. He denied having written certain letters attached to the proceedings and exhibited to him.

Reading of the documentary evidence was waived by both parties.

Three experts then made an examination of the letters referred to and several fragments of a document purporting to be an appointment of colonel made by Sanguily to a certain Azcuy. The experts, after a close and even ridiculous examination, decided that they were all in Sanguily's handwriting, but declared that they could not supply the words wanting in the last-mentioned document to give it the intended meaning. These are the letters upon which the prosecution principally rests its charges against Sanguily as guilty of conspiracy and rebellion.

After another short recess, the president of the court, in examination of the accused, asked him if the letter dated February 14 was written by him, which he

denied, and there appearing to be a contradiction, as in a previous examination he had identified the letter as his, the experts were recalled to examine this letter also, which they declared to have been written by Sanguiely.

The officers who arrested Sanguiely and Azcuay were next interrogated. Upon his arrest Azcuay endeavored to chew up a document found concealed in his cravat, which, it was claimed, was the appointment of colonel made out to him and signed by Sanguiely. Both officers testified that there had not been, previous to his arrest, any orders to watch Sanguiely.

The negro woman who had care of Sanguiely's room at the estate Portela was then examined. It was here that the incriminating letter alleged to have been written by Sanguiely is said to have been found, upon the sale of some old furniture taken from the room he frequently occupied.

Azcuy's examination, which followed, was to get him to acknowledge where he obtained the document he concealed in his cravat.

Upon calling for the witness Antonio Lopez Coloma, who was executed a few days ago, a laugh was raised, which the president promptly stopped. The former declaration of this witness was then read, and the defense noted a protest against this proceeding.

Court adjourned.

Upon beginning the session of the second day, the fiscal, or prosecuting officer, moved to declare the nullity of the expert testimony of the previous session on the ground that, as the appointment of new experts in place of two that died had not been communicated to the defense in time to permit a challenge within three days, as required by law, this want of form might affect the validity of said testimony. The defense declared that it had had ample notice of the appointment of experts, and accepted their report, and waived making any objection; but as the prosecution insisted on this point, the court took a recess to deliberate. Upon again resuming, it declared the expert testimony valid. The prosecution, however, made a protest against this ruling.

The declaration of the pawnbroker, where Sanguiely had pawned his machete and revolver, was then read, this witness being too ill to attend.

The fiscal then summed up against the accused, maintaining that he was one of the most active promoters of the present rebellion, initiated on February 24, 1895, and the leader designated by the revolutionary junta of New York to head the movement; that as such he issued commissions, among them one of colonel to José Ynocencio Azcuay, who was arrested, and the document being found concealed in the knot of his cravat, he endeavored to swallow it; that the fragments appear in the proceedings and have been declared by experts to be in the handwriting of the prisoner. The fiscal laid special stress upon the testimony of the accused, who had stated, when interrogated by the court, that he had not accepted the convention of Zanjón, of 1878, but had gone abroad to the United States, whence he did not return until 1879, and then as a citizen of the United States, and bitterly censured him for his acts of renouncing his nationality, of accepting the citizenship of another country, even of such a country as the United States—and here the fiscal took occasion to pronounce a decided eulogium of the United States—of that friendly and powerful nation that feels bound in dignity to protect its adopted citizens who had privileges here that even those who had not ceased to be Spaniards did not enjoy, and of again returning to the land of his birthplace, of his forefathers, and of his wife and son, to resume his residence, and forgetful of the duties imposed on him as a foreign citizen to remain neutral, to conspire to head a revolutionary movement, issuing commissions, and executing preparatory acts of rebellion, such as recruiting men and acquiring arms and ammunition. That in his opinion the proofs were positive, and that he therefore demanded the penalty of chains for life.

Counsel for the defense then commenced his argument, but on account of the late hour the court adjourned.

The session of the third and last day of the trial was taken up in listening to the plea for the defense.

In this the counsel declared that the trustworthy private advices of Governor-General Calleja, who stated that Julio Sanguiely and José María Aguirre were the principal promoters of an armed rebellion, had not been proven in the trial.

General Calleja had stated that Sanguiely and Aguirre had been designated to put themselves at the head of the insurrection in the provinces of Habana, Matanzas, and Santa Clara; that they had direct relations with the revolutionary committees abroad, and were delegates to the Cuban junta of New York; that they recruited men and acquired arms and ammunition to make war against the mother country, and this was confirmed by their conduct, closely watched by the police; that neither the statement of the chief of police of that date nor that of his subordinate officers have confirmed that allegation that Sanguiely was under police surveillance; that they have declared that they never received any orders to that effect and that no further antecedents against Julio Sanguiely than those of his participation in the last revolution.

That on the day the present insurrection broke out, Sanguiely, Aguirre, Perez Trujillo, and Gomez de la Maza were arrested. All of them, with the exception of Sanguiely, were released after a few days.

The private advices of General Calleja, whose existence in the offices of the General Government and of the Captaincy-General had been denied by Gen. Martinez Campos in two official communications, which appear in the proceedings, this secret information served as the only basis for the arrest of Sanguiely, Perez Trujillo, Aguirre, and Gomez de la Maza, and ought not to have any influence in this process, because the facts have not been proved, and with respect to the others named have had no effect whatever.

Where appear the relations that Sanguiely is said to have had with the insurgents, and especially with those of Matanzas, and where appears the acquisition by Sanguiely of the war material referred to by the prosecution? And the defense refers to a communication from the governor of Matanzas to the effect that the existence of any such committee in Matanzas had not been proved, and that in the proceedings against Juan Gualberto, Gomez, and others, for the acquisition of munitions of war, there appeared no charge against Sanguiely.

Moreover, the statement of Lopez Coloma, after all, is not altogether against Sanguiely, for that which he made before the military jurisdiction relating to the manner of his capture contained nothing positive against Sanguiely; however, he was obliged to declare that Coloma's testimony read before the court was null and void, for he had been executed, and said nullity was founded on strict principles of the law of criminal procedure.

That with respect to the expert testimony, although the experts were disposed to declare all the letters to be in the handwriting of Sanguiely, yet they did not confirm anything in respect to the principal point of the colonel's commission seized upon Azeny, and were unable to supply the words missing therein to give it sense; and even if Sanguiely had issued said commission, there had been no proof presented that he was authorized, nor any proof whatever by the police or the Government that Sanguiely had been designated as a leader of the rebellion; and further, that upon this point Juan Gualberto Gomez had declared that he was the only delegate of the junta, and no leader had been designated for the movement.

The counsel of the defense concluded by declaring that against Sanguiely there were only his antecedents as a leader in the last insurrection, hypotheses, presumptions, suspicions, which, when taken into account that it was a question of a serious penalty, should have no weight upon the mind of the court. He therefore demanded the acquittal of his client, and finished his plea with thanks and grateful compliments to the fiscal and judges for their patient hearing.

Upon being asked if he had aught to say, Sanguiely said: "Not a word, absolutely."

The trial was declared to be over, and the court rose. Sentence may be delayed five days.

I am, etc.,

JOSEPH A. SPRINGER,  
Vice-Consul-General.

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*Mr. Lee to Mr. Rockhill.*

No. 275.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, December 30, 1896. (Received January 2, 1897.)*

SIR: With reference to the trial of Julio Sanguiely, reported by Mr. Springer in dispatch No. 271, of the 24th instant, I have to confirm my telegram of the 28th instant, as follows:

"Assistant Secretary of State, Washington:

"Sanguiely sentenced life imprisonment. Appeal to be taken.

"LEE."

I am, etc.,

FITZHUGH LEE, Consul-General.

Again, the question of the violation of the treaty was raised by express protest in court, and was overruled by the court, and the organization of the court was also protested against, as being contrary to the treaty. The findings of the prosecution before the court-martial was again made the basis of the charges against Sanguiely, contrary to our treaty with Spain. They were ex parte and were not in accordance with law. The trial, as it is detailed in Mr. Springer's dispatch, was even more flagrant in its injustice and illegality than the first

trial in November, 1895, and was attended with outbreaks of invective against the United States, which revealed the animus of the prosecution.

Sanguily was again condemned and sentenced to life imprisonment in chains, and has again appealed to the supreme court at Madrid. No just or lawful ground exists for the support of this cruel sentence, which is also a defiant repudiation of our solemn treaties with Spain. Whether the motive is to punish Sanguily for his gallant career in the former revolution, or to make an example of his sufferings that would alarm other Cubans into submission, or to resent his claim of protection under his citizenship in the United States, or to renounce the obligations of treaties and to defiantly refuse to respect them, the result is that an innocent, honorable, and brave man has been made to suffer in a manner and to an extent that is shocking to humanity. The United States should not, by tolerating such wrongs, become a party to their infliction upon its worthy citizen.

Your committee therefore recommend the adoption of the accompanying joint resolution as a substitute for Senate Res. No. 186, which was referred to them by the Senate.

## APPENDIX TO REPORT NO. 1534.

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[54th Congress, 2d session. Senate Document No. 104.]

### MESSAGE

FROM THE

## PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

IN RESPONSE TO SENATE RESOLUTION OF THE 6TH OF JANUARY, A REPORT FROM THE SECRETARY OF STATE, ACCOMPANIED BY COPIES OF CORRESPONDENCE CONCERNING THE ARREST, IMPRISONMENT, TRIAL, AND CONDEMNATION TO PERPETUAL IMPRISONMENT IN CHAINS OF JULIO SANGUILY, A CITIZEN OF THE UNITED STATES, BY THE AUTHORITIES OF SPAIN IN CUBA.

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FEBRUARY 1, 1897.—Referred to the Committee on Foreign Relations and ordered to be printed.

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#### *To the Senate:*

I transmit herewith, in response to a resolution of the Senate of the 6th ultimo, a report from the Secretary of State, accompanied by copies of correspondence concerning the arrest, imprisonment, trial, and condemnation to perpetual imprisonment in chains of Julio Sanguily, a citizen of the United States, by the authorities of Spain in Cuba.

GROVER CLEVELAND.

EXECUTIVE MANSION,

Washington, February 1, 1897.

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#### The PRESIDENT:

The Secretary of State, to whom was referred the resolutions of the Senate of January 6, 1897, requesting the President to send to the Senate, "if in his opinion not incompatible with the public interest, all the correspondence and reports of the consul-general of the United States at Habana relating to the arrest, imprisonment, trial, and condemnation to perpetual imprisonment in chains of Julio Sanguily, a citizen of the United States, by the authorities of Spain in Cuba," has the honor to lay before the President copies of the correspondence called for.

It should be added that in view of all the circumstances of this case, and especially of the long imprisonment already suffered by the accused,

representations have been made to the Spanish Government, which it is believed will not be without effect, that the case seems to be one in which executive clemency may be reasonably exercised.

Respectfully submitted.

RICHARD OLNEY.

DEPARTMENT OF STATE,  
*Washington, January 30, 1897.*

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LIST OF PAPERS.

From the consul-general at Habana, No. 2429, February 27, 1895, with inclosure.  
 From the consul-general at Habana, No. 2442, March 9, 1895, with inclosures.  
 To the consul-general at Habana, No. 1049, March 11, 1895.  
 From the consul-general at Habana, telegram, March 18, 1895.  
 From the consul-general at Habana, No. 2457, March 23, 1895, with inclosure.  
 From the consul-general at Habana, No. 2462, March 28, 1895, with inclosure.  
 From the consul-general at Habana, No. 2465, April 2, 1895, with inclosure.  
 To the consul-general at Habana, No. 1061, April 4, 1895.  
 To the consul-general at Habana, No. 1062, April 5, 1895.  
 From the consul-general at Habana, telegram, April 25, 1895.  
 From the consul-general at Habana, No. 2491, April 26, 1895, with inclosure.  
 From the consul-general at Habana, No. 2498, May 4, 1895, with inclosure.  
 From the consul-general at Habana, May 6, 1895.  
 From the vice-consul-general at Habana, No. 2502, May 7, 1895, with inclosure.  
 To the vice-consul-general at Habana, telegram, May 21, 1895.  
 From the vice-consul-general at Habana, No. 2507, May 25, 1895, with inclosure.  
 To the vice-consul-general at Habana, No. 1087, June 10, 1895.  
 To the vice-consul-general at Habana, telegram, June 18, 1895.  
 From the vice-consul-general at Habana, No. 2521, June 21, 1895.  
 From the vice-consul-general at Habana, No. 2523, June 25, 1895.  
 To the consul-general at Habana, No. 1100, July 8, 1895.  
 To the consul-general at Habana, No. 1101, July 8, 1895.  
 To the consul-general at Habana, telegram, July 23, 1895.  
 From the consul-general at Habana, No. 2541, July 24, 1895.  
 From the consul-general at Habana, No. 2543, July 27, 1895, with inclosure.  
 From the consul-general at Habana, No. 2549, August 2, 1895.  
 From the consul-general at Habana, No. 2558, August 7, 1895, with inclosure.  
 To the consul-general at Habana, No. 1119, August 7, 1895.  
 From the consul-general at Habana, No. 2570, August 17, 1895, with inclosure.  
 From the consul-general at Habana, No. 2580, August 27, 1895, with inclosure.  
 To the consul-general at Habana, telegram, September 3, 1895.  
 From the consul-general at Habana, telegram, September 6, 1895.  
 From the consul-general at Habana, No. 2585, September 6, 1895, with inclosure.  
 To the consul-general at Habana, No. 1145, September 7, 1895.  
 From the consul-general at Habana, No. 2586, September 11, 1895, with inclosures.  
 From the consul-general at Habana, No. 2588, September 12, 1895, with inclosures.  
 To the consul-general at Habana, No. 1152, September 12, 1895.  
 To the consul-general at Habana, No. 1160, September 28, 1895.  
 From the consul-general at Habana, No. 2617, October 9, 1895.  
 From the consul-general at Habana, No. 2621, October 14, 1895, with inclosure.  
 From the consul-general at Habana, No. 2627, October 19, 1895.  
 From the consul-general at Habana, No. 2637, November 2, 1895.  
 From the consul-general at Habana, No. 2640, November 4, 1895, with inclosure.  
 To the consul-general at Habana, No. 1177, November 9, 1895.  
 To the consul-general at Habana, No. 1180, November 14, 1895.  
 From the consul-general at Habana, No. 2659, November 21, 1895.  
 From the consul-general at Habana, No. 2661, November 22, 1895.  
 From the consul-general at Habana, telegram, November 29, 1895.  
 From the consul-general at Habana, telegram, December 3, 1895.  
 From the consul-general at Habana, No. 2677, December 7, 1895, with inclosures.  
 To the consul-general at Habana, No. 1203, December 7, 1895, with inclosure.  
 To the consul-general at Habana, No. 1212, December 23, 1895.  
 From the consul-general at Habana, No. 2686, December 24, 1895.  
 To the consul-general at Habana, telegram, January 6, 1896.  
 From the consul-general at Habana, telegram, January 7, 1896.

To the consul-general at Habana, telegram, January 23, 1896.  
 From the consul-general at Habana, telegram, January 24, 1896.  
 To the consul-general at Habana, telegram, January 25, 1896.  
 From the consul-general at Habana, No. 2756, February 6, 1896, with inclosures.  
 To the consul-general at Habana, No. 1265, February 20, 1896.  
 To the consul-general at Habana, No. 1273, February 28, 1896.  
 To the consul-general at Habana, telegram, February 28, 1896.  
 From the consul-general at Habana, telegram, March 2, 1896.  
 From the consul-general at Habana, No. 2809, March 7, 1896.  
 From the consul-general at Habana, No. 2812, March 10, 1896, with inclosures.  
 From the consul-general at Habana, No. 2847, March 30, 1896.  
 From the consul-general at Habana, telegram, April 24, 1896.  
 To the consul-general at Habana, No. 13, June 18, 1896.  
 From the consul-general at Habana, No. 20, June 30, 1896, with inclosure.  
 From the consul-general at Habana, No. 152, September 30, 1896, with inclosures.  
 To the consul-general at Habana, No. 116, October 6, 1896.  
 From the consul-general at Habana, No. 164, October 7, 1896, with inclosures.  
 From the consul-general at Habana, No. 169, October 9, 1896.  
 To the consul-general at Habana, No. 129, October 17, 1896.  
 To the consul-general at Habana, No. 161, November 12, 1896.  
 From the vice-consul-general at Habana, No. 261, December 16, 1896, with inclosure.  
 From the vice-consul-general at Habana, telegram, December 23, 1896.  
 From the vice-consul-general at Habana, No. 271, December 24, 1896.  
 From the consul-general at Habana, No. 275, December 30, 1896.  
 From the consul-general at Habana, No. 283, December 31, 1896.

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*Mr. Williams to Mr. Uhl.*

No. 2429.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, February 27, 1895. (Received March 5.)*

SIR: I have to inform you that last Sunday afternoon, the 24th instant, Mr. Manuel Sanguily, of this city, called on me at my residence to inform me, in the name of his brother, Mr. Julio Sanguily, that the latter had been arrested in this city on the morning of that day and lodged in the Cabana fortress, subject to the military jurisdiction, by order of His Excellency the Governor-General of this island, and to ask from me the intervention of this consulate-general in behalf of his brother, on the ground of the latter being an American citizen.

On reaching the office the next morning I found that Mr. Julio Sanguily is registered in this consulate-general as an American citizen on a certificate of naturalization issued to him on the 6th of August, 1878, by the superior court of New York, and passport 9310 of the Department of State, dated the 7th of same month and year, and also upon the personal document issued to him on the 22d of the same month and year by the government general of this island.

In consequence, and after having ascertained on verbal information that Mr. Sanguily had been arrested upon suspicion of conspiring against the Government of Spain, and not having been captured with arms in hand, but arrested at his home, amid his family in this city, and urged by the entreaties sent me by his wife and others, who feared he might be immediately shot by order of the court-martial, I made a visit to the Governor-General to acquaint him with the facts concerning the American citizenship of the accused, and to inform him that I would at once prepare and address him a communication to ask that Sanguily be transferred from the military to the civil or ordinary jurisdiction for trial, with the right to appoint whatever advocates, solicitors, and notaries for his defense as he might choose, in accordance with the Collantes-Cushing agreement of the 12th of January, 1877. Accordingly, I addressed and delivered the next day to his excellency my communication of same date,

copy and translation of which are herewith accompanied for the information of the Department.

In connection with this subject I have to say that the friends of Mr. Sanguiy seem to be under the impression that this consulate-general has to take exclusive charge of his case. I have answered that the functions of this office in the matter, until otherwise instructed by the Department of State, are limited to the claiming and to the seeing that Mr. Sanguiy, since he was not captured with arms in hand, be tried by the civil or ordinary and not by the military jurisdiction, with the exercise of his right of naming his own advocates, solicitors, and notaries for his defense before the court, and for the securing to him of a fair trial, in accordance with the terms of the said Collantes-Cushing agreement, the legal expenses of his defense being for his own account.

Awaiting the instructions of the Department, I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure in No. 2429.—Translation.]

*Mr. Williams to the Governor-General.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, February 26, 1895.*

EXCELLENCY: Complying with the general instructions of my Government, and with reference to the conversation I had the honor to hold with your excellency yesterday respecting the arrest of Mr. Julio Sanguiy, a citizen of the United States, and held in Fortress Cabanas for trial by the military jurisdiction, as I understand, for supposed connection with an attempt to disturb the public peace of this island, I have to ask in the name of my Government that your excellency be pleased to order the strict observance of the agreement of the 12th of January, 1877, between the United States and Spain in the trial of this American citizen, the first article of which agreement provides that—

“No citizen of the United States residing in Spain, her adjacent islands, or her ultramarine possessions, charged with acts of sedition, treason, or conspiracy against the institutions, the public security, the integrity of the territory or against the supreme government, or any other crime whatever shall be subject to trial by any exceptional tribunal, but exclusively by the ordinary jurisdiction except in the case of being captured with arms in hand.”

Therefore, as this individual has not been captured with arms in hand in any attempt against the sovereignty of Spain in this island, but at his home amid his family circle in this city, I have, likewise, to ask that your excellency be pleased to inhibit the military jurisdiction from cognizance of this case, and to order at the same time that the trial of the accused be transferred to the ordinary jurisdiction, with his right to appoint such advocates, solicitors, and notaries as he may choose for his defense before the corresponding court, in accordance with the said agreement of the 12th of January, 1877, and with the provisions of article 7 of the treaty of the 27th of October, 1795, between Spain and the United States.

I have, etc.,

RAMON O. WILLIAMS, *Consul-General.*

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[Subinclosure in No. 2429.]

*Extract from the register of citizens of the United States kept at this consulate-general.*

August, 1878. Julio Sanguiy, 32 years of age; native of the island of Cuba; married; profession, commerce; transient residence San Rafael Baths.

Naturalized as a citizen of the United States on the 6th of August, 1878, by the superior court of New York. Passport No. 9310 issued by the Department of State, at Washington, on the 7th of August, 1878. Government-general of the island of Cuba issued him personal document (“cedula personal”), dated the 22d of August, 1878.

I certify that the preceding is a faithful extract from the register kept in this consulate-general.

(Signed)

RAMON O. WILLIAMS, *Consul-General.*

*Mr. Williams to Mr. Uhl.*

No 2442.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 9, 1895. (Received March 14.)*

SIR: With reference to my dispatch No. 2429, of the 27th ultimo, reporting the arrest and subjection to court-martial, instead of to an ordinary court for trial, of Mr. Julio Sanguily, I have the honor to inclose, for the information of the Department, the copy and translation of the communication dated the 1st instant, addressed to this office by the secretary of the government general of the island, together with copies of my answer, dated the 4th and 7th instant, all in relation to this affair.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 1 in No. 2442.—Translation.]

*Mr. de Antonio to Mr. Williams.*

GOVERNMENT GENERAL OF THE ISLAND OF CUBA,  
OFFICE OF SECRETARY-GENERAL,  
*Habana, March 1, 1895.*

SIR: His excellency the Governor-General being informed of your communication of the 26th of February last, referring to the arrest of Mr. Julio Sanguily, has been pleased to order that you be advised, as I now have the honor of doing, that, as according to article 7 of the law relating to foreigners of the 4th of July, 1870, not contradicted nor vitiated by the agreement of the 12th of January, 1877, between Spain and the United States, nor by the treaty of the 27th of October, 1795, every foreigner resident in the island of Cuba, to be considered as such, must be inscribed in the register of foreigners of the Government, besides being inscribed in that of the consulate of his nation, it becomes necessary in order to proceed with the remonstrance founded on the character of American citizen of Mr. Sanguily, that you accredit that the said individual has complied with the precept of the said article 7 of the law of the 4th of July, 1870, of having presented for that purpose the certificate of his inscription in the register of foreigners which, till the decree of the 21st of December, 1880, was kept by this government general, and from that date and by order of the said decree by the civil governments of the provinces.

God guard you many years.

ESTANISLAO DE ANTONIO.

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[Inclosure 2 in No. 2442.—Translation.]

*Mr. Williams to Mr. de Antonio.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 4, 1895.*

SIR: Replying to the communication that by order of his excellency the Governor-General you were pleased to address me on the 1st instant, received on the 2d, signifying the necessity on the part of this consulate-general to accredit the fact of Mr. Julio Sanguily having complied with the precept of article 7 of the law relative to foreigners, by presenting the certificate of his inscription in the register of foreigners, which up to the 21st of December, 1880, was kept in the government general, and from that date and by virtue of the same decree is now kept by the civil governments of the provinces, before my remonstrance in his case can be taken into consideration, I now have the honor to state that the extract taken from the register of this consulate-general and added at the foot of the communication that I had the honor to address his excellency on this subject shows the fact of the general government of this island having issued to Mr. Sanguily the usual personal pass (cedula personal), under number 1613, dated the 22d of August, 1878, the authenticity of which fact will doubtlessly be corroborated on the making of the proper comparison with the corresponding register in the office of your worthy charge; your question being duly answered as I believe with the foregoing.

God guard you many years.

RAMON O. WILLIAMS, *Consul-General.*

[Inclosure 3 in No. 2442.—Translation.]

*Mr. Williams to Mr. de Antonio.*UNITED STATES CONSULATE-GENERAL,  
*Habana, March 7, 1895.*

SIR: In amplification of my communication of the 4th instant, replying to your attentive communication of the 1st instant, I have the honor to accompany a copy of the personal pass (*cedula personal*), such as are issued to transient foreigners, that the civil government was pleased to issue to Mr. Julio Sanguily, under date of the 30th of October, 1886; as, also, another under date of the 5th of November, 1886, in favor of his wife, Mrs. Matilda Echarte de Sanguily, the latter including their minor son Julio, accrediting thereon, as customary, the American citizenship of the said Sanguily, and of his wife and son, which documents will be preserved in this consulate-general at the disposal of the advocate that may be named by the accused for his defense before whatever competent court of the civil or ordinary jurisdiction he may be tried, in accordance with the agreement of the 12th of January, 1877, between the United States and Spain.

God guard you many years.

RAMON O. WILLIAMS, *Consul-General.*

[Translation.]

Number.

Personal pass, fiscal year 1886-87. Province of Habana. Transient foreigners, gratis.

Mr. Julio Sanguily, native of Cuba. American citizen, province of id., 41 years of age, married, profession merchant, residing in Lombillo, No. 4, and resides habitually in El Cerro.

Habana, October 30, 1886.

By the Governor:

[SEAL.]

E. GUILLERME.

Number.

Personal pass, fiscal year, 1886-87. Province of Habana. Transient foreigners, gratis.

Mrs. Matilde Echarte de Sanguily, native of Cuba, American citizen, province of id., 27 years of age, married, profession, her house in which she resides, and resides there habitually, accompanied by her son Julio, a minor.

Habana, November 5, 1886.

By the Governor:

[SEAL.]

E. GUILLERME.

*Mr. Uhl to Mr. Williams.*

No. 1049.]

DEPARTMENT OF STATE,  
*Washington, March 11, 1895.*

SIR: I am in receipt of your dispatches, Nos. 2429 to 2434, inclusive, relative to the recent political disturbances in the island of Cuba and the arrest of Messrs. Julio Sanguily and José Maria Aguirre, American citizens, for alleged complicity therein. Your application to the Governor-General for the transfer of these cases from military to civil jurisdiction under the provisions of the protocol of January 12, 1877, was correct and proper, and is approved. Your understanding of the limits of your duty in respect to these arrests, as explained in your No. 2429, is correct.

I am, etc.,

EDWIN F. UHL.

[Telegram.]

*Mr. Williams to Mr. Olney.*

HABANA, March 18, 1895. (Received March 19.)

My affirmation of the American citizenship of Julio Sanguily having been comprobated and authenticated by the civil government of the Province of Habana, the Governor-General has ordered his transfer from the military to the civil jurisdiction for trial in accordance with protocol twelve January, seventy-seven, as I asked on the 26th ultimo.

*Mr. Williams to Mr. Uhl.*

No. 2457.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 23, 1895.*

SIR: With reference to previous correspondence on the subject, I have the honor to inclose copy of the official note of the secretary of the general government of the island, dated the 16th instant, received on the 18th, informing me that in accordance with my solicitation of the 26th ultimo his excellency the Governor-General has ordered the transfer of Mr. Julio Sanguily from the court-martial to which he had been committed to the civil or ordinary jurisdiction for trial, with the strict observance in his favor of all the guarantees of the protocol of the 12th of January, 1877.

In submitting this correspondence to the Department I beg to make the following observations in explanation of my reasons for calling so early and so promptly on the Governor-General, which action appears to have given rise to the belief on his part that I was acting indiscreetly, and, perhaps, at an inopportune moment:

On going to the Governor-General at the early hour of 8 o'clock in the morning of the 25th ultimo, I was solely animated by a sense of public duty: to inform him as soon as possible of the facts relating to the American citizenship of Sanguily, thinking he might not be acquainted with them, and to ask for his transfer from the court-martial to the civil jurisdiction for trial, in accordance with the terms of the agreement of the 12th of January, 1877, since I had been assured that he had not been arrested with arms in hand in any attempt against the public security, but when quietly at his home in this city.

I also conceived it to be a part of my duty on this occasion to do all in my power to prevent the issuance of any misunderstanding out of this affair between the Governments of the United States and Spain from hasty action, either from inadvertence or inobservance on the part of the court-martial of the terms of that agreement. I thought that I had good reasons for this promptness of action, because when I remonstrated in 1893 in the case of Howard, who had been subjected to court-martial for trial on account of an incident sprung from a sailor's spree, and asked for his transfer to the ordinary or civil jurisdiction, as the correspondence on file at the Department will show, the deputy prosecuting attorney, to whom my remonstrance had been referred for his opinion, denied the existence of that agreement, and assumed that I had committed a mistake; and he further assumed that the only agreement made between the United States and Spain during 1877 was the convention of the 5th of January of that year for the extradition of criminals fugitive from justice; and, besides, that my remonstrance against

the trial of Howard by court-martial was tantamount to the pretension, on the part of this consulate-general, that American citizens had greater rights within Spanish territory than the law allowed to Spanish subjects in identical cases, and closed his opinion by remanding Howard back to the court-martial. The same correspondence will show, also, that at this stage of the proceedings I called on His Majesty's prosecuting attorney (*fiscal de S. M.*), who I found was acquainted with the existence of the agreement; and ascertained from him that the error of his deputy had originated from the fact that the agreement had never been published by the Spanish Government. The latter then withdrew his opposition to my petition, and Howard was tried by the superior court, having had for his defense one of the best lawyers of the bar of Habana appointed by the same court, he not having had wherewith to pay the expenses of his defense. He was convicted, and is still serving out his sentence.

Soon afterwards Oglesby was arrested and the fact reported to the Department. The judge of the primary court committed the like error of turning him over to the military instead of to the ordinary jurisdiction for trial. But on my interference he was transferred to the civil court, tried, and was acquitted.

Then followed the case of Rosell, another American citizen, at Santiago de Cuba, who by like mistake was sent to the court-martial for trial. But on my representation to the then acting governor-general he was turned over to the civil court, tried, and acquitted.

Immediately following the arrest of Mayolin, also another American citizen, took place at Santa Clara. He was likewise subjected through error of the primary judge to court-martial, and on presenting my petition to the Governor-General now in charge he asked me in rather a curt manner if it was the duty of this office to defend such men. I answered him very civilly that I had not come as the advocate of Mayolin, as that was a matter of his own appointment, under the agreement, his defense before the courts not being a consular function; and furthermore that I knew nothing of the charges against him, and that my petition was limited solely to the asking that he should be tried by an ordinary civil court instead of by a court-martial, in accordance with the agreement, since I was assured that he had not been captured with arms in hand in any attempt against the Government. The Governor-General then understood the object of my call, received my remonstrance, and soon after decreed the transfer of Mayolin to the civil court, by which he was in turn tried and acquitted, thus by his own decree justifying my action in the case.

Returning now to the case of Sanguily, the subject of my visit to the Governor-General on the morning of the 25th ultimo, I found that my conjecture proved correct, for he was surprised on learning the fact of the American citizenship of Sanguily having been recognized by the Governments of the United States and Spain. Neither did he understand or appreciate the motives of my visit to him.

On the morning of the 26th ultimo I called again on his excellency to present him my official communication of the same date. On this occasion, as on the previous one, he showed unmistakable signs of displeasure. But he received my communication, and his decree of the 16th instant, ordering the transfer of Sanguily from the court-martial to the civil court for trial, is a full justification of my action and conduct throughout this whole affair.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2457.—Translation.]

*Mr. de Antonio to Mr. Williams.*GOVERNMENT-GENERAL OF THE ISLAND OF CUBA,  
OFFICE OF THE SECRETARY-GENERAL,  
*Habana, March 16, 1895.*

SIR: On receipt of the data contained in your communication of the 7th instant, to the effect that the civil government of this province had issued in October, 1886, a personal pass to Mr. Julio SangUILY, such as are issued to transient foreigners, and inasmuch as the information given in your other communication of the 4th could not be comprobated, because of there existing no antecedents of the case in this office of the secretary-general, his excellency the governor-general ordered that information be asked of the aforesaid provincial government regarding the issue of the said personal pass, and if Mr. Julio SangUILY was or was not inscribed in the register of the provincial government as an American citizen, with remittance, in the affirmative case, of a literal certificate of the inscription, which measure has resulted in affirming his American citizenship, accompanied by certificate of the fact.

Therefore, the governor-general has on this date issued the following decree:

"It being comprobated by the aforementioned certificate that Mr. Julio SangUILY is inscribed in the register of foreigners kept by the government of this province as a transient foreigner since the 8th of July, 1889, and it being thereby demonstrated that the said Mr. SangUILY has the right to be considered as an American citizen for all legal effects, the strict fulfillment is ordered in his trial on the charge of an attempt against the public security, of which he is accused, of the provisions of the agreement of the 12th of January, 1877, as claimed by the consul-general of the United States of America at Habana, with instructions to the judge-advocate commissioned by this captaincy-general with the examination of the charge against SangUILY, with respect to it, that he inhibit himself from the cognizance of the same in favor of the civil authority. And that the said consul-general be informed of this decision.

"CALLEJA."

And complying with the order of his excellency, I have the honor to inform you of his decision in answer to your petition formulated the 26th of February last.

God guard you many years.

ESTANISLAO DE ANTONIO.

*Mr. Williams to Mr. Uhl.*

No. 2462.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 28, 1895. (Received April 3.)*

SIR: With reference to previous correspondence relating to Mr. Julio SangUILY, I beg to inclose for the information of the Department a copy of the letter I addressed him on the 27th instant, informing him of the decree of the governor-general transferring his trial from the military to the civil jurisdiction. I understand that he has appointed Don Pedro Llorente, an eminent lawyer of Habana, for his defense. I was told that Don Pedro would call to see me about the case, but I learn that he is sick, for which reason I suppose he has not been able to come to the consulate-general.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure in No. 2462.]

*Mr. Williams to Mr. SangUILY.*UNITED STATES CONSULATE-GENERAL,  
*Habana, March 27, 1895.*

DEAR SIR: Not having received the visit that I have for several days been expecting from the gentleman who I understand you had appointed your advocate, and to whom I had intended to communicate the information of the transfer of your cause from the court-martial to which it had been committed to the civil court for trial,

I now inclose you copy of the official communication received on the 18th instant from the secretary of the general government informing me of the decree of his excellency the governor-general transferring your cause from the military to the civil jurisdiction for trial, with the strict observance in your favor of the provisions of the agreement of the 12th of January, 1877, between Spain and the United States, to which you are entitled as an American citizen.

I would recommend that you consult your lawyer at once upon the subject of carrying your case before the civil court.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General*.

*Mr. Williams to Mr. Uhl.*

No. 2465.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, April 2, 1895. (Received April 8.)*

SIR: Believing that it may interest the Department, I inclose the translation of an article taken from *El Pais*, of this city, purporting to be a recital of the remarks made by the minister of state of Spain on the 4th ultimo concerning the solicitations that I presented to the governor-general for the trial of Sanguily and Aguirre, American citizens, by the ordinary instead of the military jurisdiction, in accordance with the agreement of the 12th of January, 1877.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General*.

[Inclosure 1 in No. 2465.—Translated by Consul-General Williams from *El Pais*, of March 26, 1895.

#### THE INSURGENTS AND THE GOVERNMENT OF THE UNITED STATES.

In the session of congress of the 4th instant, Mr. Osma asked the government if it is true that the consul of the United States at Habana had remonstrated because in Cuba there had been arrested some individuals who favor the independence of that island and who had invoked their title of citizens of the United States for the purpose of obtaining their liberation.

The minister of state replied that he had news of such remonstrance, and said there are three persons arrested who invoke that right for their liberation.

He added that one of them had applied to the American consul and the latter made some observations, but that General Calleja had refused to recognize them and the government had approved his conduct.

He manifested in opposition that the State exercises all its authority within the territory of its sovereignty, and that therefore all who attempt against the integrity of the country are subject to arrest.

He stated that in Cuba there exists the law relating to foreigners of Mr. Pacheco, and in consequence the parties under arrest can not enjoy greater privileges than Spaniards.

He furthermore explained that as the constitutional guaranties are suspended in Cuba, the governor-general has the right to arrest all suspicious foreigners the same as Spaniards.

He also said that one year before the peace of Zanjón a protocol was formed at Madrid at the instance of the American minister, because among the insurgents arrested there were some citizens of the United States, and it was declared in the protocol of the 12th of January, 1877, that the natives (*los naturales*) of the great Republic who should take up arms against our country would be tried by the ordinary court—that is, it was granted (*sic*) that they would not be tried by court-martial.

He concluded by saying that the Spanish Government trusted that the Government of the United States will not interpose difficulties against carrying out the laws, and that if there are any who conspire against the country, pretending to shield themselves under the character of foreign subjects, they will be punished without hesitation.

*Mr. Uhl to Mr. Williams.*

No. 1061.]

DEPARTMENT OF STATE,  
*Washington, April 4, 1895.*

SIR: Your No. 2457, of the 23d ultimo, announcing the transfer of Sanguily's case from the military to the civil jurisdiction, has been received.

Your account of the confusion and delay in understanding the rights of American citizens in this matter, due to the long postponed publication of the protocol of 1877, has been read with interest.

It is noticed that Governor-General Calleja's decree of March 16, prescribing civil jurisdiction in Sanguily's case, rests ostensibly on the statement that Sanguily has been registered as a transient foreigner since July 8, 1889.

It is hoped that the case of Jose Maria Aguirre will promptly follow the same disposition as that of Sanguily. You will endeavor to prevent any delay on merely technical grounds touching Aguirre's registration, and, as regards proof of his citizenship, you will continue to act in accordance with instruction No. 1057, sent you March 21.

I am, etc.,

EDWIN F. UHL.

*Mr. Uhl to Mr. Williams.*

No. 1062.]

DEPARTMENT OF STATE,  
*Washington, April 5, 1895.*

SIR: I am in receipt of your dispatch No. 2462, of the 28th ultimo, inclosing a copy of a letter addressed by you to Mr. Julio Sanguily, informing him of the transfer of his case to civil jurisdiction.

I am, sir, etc.,

EDWIN F. UHL.

[Telegram.]

*Mr. Williams to Mr. Gresham.*

*HABANA, April 25, 1895.*

Sanguily was committed yesterday to court-martial for another charge, and as Aguirre and Carrillo had not yet been transferred to civil court, I have protested in the name of the Government of the United States in the three cases.

*Mr. Williams to Mr. Uhl.*

No. 2491.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, April 26, 1895. (Received April 30.)*

SIR: I have the honor to inform you that in compliance with the telegram of the honorable Secretary of State of the 16th instant, I addressed a communication yesterday to his excellency the general in charge of the Captaincy-General, asking for the transfer of Mr. Julio

Sanguily on the second charge from the military to the civil jurisdiction for trial, in accordance with the requirements of the agreement of the 12th of January, 1877, and entering at the same time the formal protest of the Government of the United States before the government of this island against any further delay in his transfer to the civil jurisdiction; protesting alike against all the proceedings hitherto practiced or that may hereafter be practiced by the court-martial now trying him, because they are in clear contradiction of the said agreement between the two nations.

I have, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 1 in No. 2491.]

*Mr. Williams to the Captain-General of Cuba.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, April 25, 1895.*

EXCELLENCY: Notwithstanding the decree issued on the 16th of March last by his excellency the Governor-General of this island, inhibiting the military jurisdiction of the cognizance of the cause of the American citizen, Mr. Julio Sanguily, and ordering its transfer to a court of the civil jurisdiction in strict observance of the agreement of the 12th of January, 1877, nevertheless I am informed by his advocate that he has again been subjected to a court-martial, by order of the military jurisdiction; this time on a charge alleged to be related to the kidnaping last year of Mr. Fernandez de Castro, and in consequence this American citizen has been again remanded into solitary confinement and deprived of all intercourse with his counsel by order of the court-martial.

This proceeding on the part of the military jurisdiction is not only an infraction of the agreement, but it is likewise in contradiction of the said decree of the 16th of March last of his excellency the Governor-General of this island.

I have, therefore, and in compliance with the instructions of my Government, to ask your excellency to have the goodness to order that this second case against this American citizen be also transferred to the civil jurisdiction for trial as his excellency the Governor-General was pleased to order in the first case; and also by order of my Government to enter its most formal protest before the government of this island against any delay in the transferring of this second cause against Sanguily to the civil jurisdiction; as likewise to protest against all proceedings hitherto practiced in this case or that may hereafter be practiced in this case by the court-martial now trying this American citizen, because they are in clear contradiction of the said agreement between the two nations.

I have, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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*Mr. Springer to Mr. Uhl.*

No. 2498.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, May 4, 1895. (Received May 13.)*

SIR: With reference to the correspondence of this office in the cases of Messrs. Julio Sanguily and José Maria Timoteo Aguirre, and especially to Mr. Williams's communication to the government of this island of the 25th ultimo (inclosure to dispatch No. 2491), I have now the honor to accompany copy and translation of a communication received to-day from the acting Captain-General to the effect that orders had been given to have copies made by the special judge of instruction of those parts of the cause instituted against Julio Sanguily and others, for conspiracy for rebellion, which affect the American citizens, Messrs. Julio Sanguily and José Maria [Timoteo] Aguirre Valdes, which copies

would be shortly sent to the civil jurisdiction of this city, his excellency having waived the military jurisdiction in favor of the civil jurisdiction as respects the said parties.

I understand that to-day is the tenth day that Mr. Sanguily has been "incomunicado" (in solitary confinement) by order of the military authority, not allowed the visits of his family, or even to see his advocate appointed by him for his defense.

Very respectfully, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

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[Inclosure in No. 2498.—Translation.]

*Acting Captain-General of Cuba to Mr. Williams.*

CAPTAINCY-GENERAL OF THE EVER FAITHFUL ISLAND OF CUBA,  
OFFICE OF CHIEF OF STAFF,  
*Habana, May 4, 1895.*

SIR: By a decree examined and approved (auditoriado) under this date, in the cause instituted against the civilian Mr. Julio Sanguily and several others, for the crime of conspiracy for rebellion, I have resolved among other matters that by the special judge of instruction of said cause shall be made a copy of several parts of the cause wherein it concerns Messrs. Julio Sanguily and José Maria [Timoteo] Aguirre Valdes, American citizens, which copy I shall very soon send to the ordinary jurisdiction of this capital in order that said parties may be tried thereby for crimes imputed to them, for the reason that I have inhibited myself (waived) jurisdiction in favor of said courts in respect to the said parties. Which I have the honor of informing you for your knowledge.

God guard you many years.

JOSÉ ARDERIUS.

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*Mr. Williams to Mr. Uhl.*

35 CAMBRIDGE PLACE,

*Brooklyn, May 6, 1895. (Filed June 17.)*

SIR: As supplementary to my dispatch No. 2457 of the 23d of March last, I now beg to report to the Department in relation to certain incidents of an unusual and disagreeable nature that arose out of the conversations I had with Gen. Emelio Calleja, then Governor-General of the island of Cuba, when on the mornings of the 25th and 27th of February and 2d of March last I called on him in defense of the American citizens Mr. Julio Sanguily and Mr. José Maria Timoteo Aguirre.

As already reported to the Department, these two American citizens were arrested on alleged charges of sedition by the municipal police of Habana on Sunday the 24th of February last, while peacefully deporting themselves, and lodged in the Cabaña fortress and subjected at once for trial to a court-martial, contrary to the agreement of the 12th of January, 1877, between Spain and the United States, which provides that American citizens arrested under such circumstances or for any other crime without arms in hand shall not be tried by any exceptional tribunal, but by those of the ordinary or civil jurisdiction.

In consequence, and apprehending from the activity displayed by the Government in making arrests, in subjecting the parties arrested to court-martial for trial, in issuing proclamations suspending the action of the civil law in certain cases, and from the haste with which the military jurisdiction was proceeding in the trials of the accused, I went early the next morning, the 25th of February, to see the Governor-General with the view of informing him of the American citizenship of Sanguily. On

reaching the palace I learned that Aguirre had also been arrested and subjected to court-martial, and on being received by the Governor-General, I informed him that both these men were naturalized citizens of the United States, and that as such they were inscribed in the register of foreigners kept by the general government of the island of Cuba. I then remonstrated against their commitment to the court-martial for trial, and asked for their immediate transfer to the civil jurisdiction in accordance with the terms of the said agreement. The Governor-General was surprised on my informing him of the American citizenship of these men, and instantly answered me in an outburst of most violent language and gesture, saying that it was a disgrace to the American flag for the Government of the United States to protect these men, who, it was notoriously known, were conspirators against the Government of Spain, and exclaiming louder, and in still more violent language and gesture, that American citizens were openly conspiring in the United States against Spain, and that he would shoot every one of them caught with arms in hand in any attempt against the government of the island, regardless of the consequences.

Upon this utterance I calmly interjected the remark: "But, General, in carrying out such measures you will surely observe in all its parts the agreement between the two Governments?" Then recovering himself and in moderated tones he answered: "Yes, in observance of the agreement." I then said: "Well, General, that is all I have come to ask for, but these American citizens, instead of having been committed before a civil court in observance of the agreement, have been subjected for trial to a court-martial contrary to the agreement; for neither of them has been captured with arms in hand against the government, but arrested by the municipal police while peacefully deporting themselves in the city (Habana)."

He then made reference to the law governing the residence of foreigners in the island of Cuba, giving me to understand that it was paramount to the agreement between the United States and Spain. I then replied: "But, General, the Government of the United States will never admit that a local law or regulation is superior to an international compact; that Article VI of the Constitution of the United States is very plain upon this subject; also section 2000 of the Revised Statutes of the United States requires that the same protection to person and property shall be given by the Government of the United States to naturalized citizens in foreign countries as is accorded to native-born citizens." He then said: "Yes, but let the prisoners themselves invoke their rights of American citizenship before my judge-advocate (*ante mi fiscal*), who will consider and decide upon their rights under the agreement." As this was a plain effort on his part to eliminate my action as the representative of the United States in the matter, I replied: "General, my Government will not accept such a proposition, nor is it contemplated in the agreement that a Spanish judge-advocate could supersede a consular or diplomatic representative of the United States on such an occasion. That therefore, just as soon as possible, I would formulate a remonstrance against the infraction of the agreement in committing Sanguiy and Aguirre before a court-martial instead of before a civil court, and would present it to him for his consideration."

Hereupon he again remarked, in a violent tone of voice, as though my action was voluntary and not obligatory, "Your defense of these men is a disgrace to the American flag." I then politely answered him, saying: "General, I am acting entirely within the confines of my official duty

and in accordance with the instructions of the Secretary of State of the United States, and in strict conformity with the agreement of the 12th of January, 1877." I then bid him good morning and withdrew.

I then formulated my remonstrance in favor of Sanguiy, under the date of the 26th of February, and presented it to him in person on the morning of the 27th. This time the Governor-General, though evidently not pleased with my action in defending these American citizens, was less ill humored and more conciliatory than on my first interview, and, after a few introductory and explanatory words on my part, he received my remonstrance, and I withdrew from this second interview and returned to the consulate to take up the case of Aguirre.

Accordingly I drew up my remonstrance and petition in favor of Aguirre on the 28th of February. It was copied the next day—the 1st of March—but too late for presentation in person that day. I then let it lie over until the following morning, and on reaching the office that morning I found on my desk waiting for me the telegraphic instruction of the evening before from the honorable Secretary of State telling me that it had been represented to him that Aguirre was an American citizen, and that if his citizenship was established the agreement of January 12, 1877, applied, and for me to endeavor to secure for him the enjoyment of his guaranties. As this telegraphic instruction was so much to the purpose and so timely, I judged that the reading of it by the Governor-General would at once convince him that I was acting entirely on the lines of official duty, and, besides, remove any mistaken impression he might entertain as to the propriety of my action. I therefore took it with me to the palace, and on my being received, I handed it to him and he read it. But thinking he might not be well acquainted with the English I translated it to him verbally into the Spanish language. He seemed to be satisfied. I then delivered him my remonstrance and was about to take my leave, when he suddenly changed countenance, and spoke to me in a menacing manner, saying: "Mr. Consul, I am told that you are sending alarming news to the newspapers of the United States, but as yet this has not been placed before me in an authentic form;" and added, "You are now advised."

I took this remark as plainly signifying that he would have my exequatur withdrawn by the Madrid Government, and I replied that I would consider it a personal favor if he would order a thorough investigation of the charge either by the government of the island or by the legation of Spain at Washington, inferring from his remarks that his information was derived from the latter. I assured him that I had never sent any information to the newspapers of the United States; that my reports on the economic condition of Cuba, to which he could only have referred, were solely addressed to the Department of State, and were made in strict conformity to my consular duties, as defined by the Consular Regulations of the United States, and that if any of them had been published in the Consular Reports it was done because of reasons satisfactory to the Department; and also if any of them had been reproduced by the newspapers of the United States it must have likewise been for reasons satisfactory to them. He then retorted that the economic condition of Cuba was unaltered, that the sugar plantations were working, the railroads were running, and that the industries and commerce of Cuba were in harmonious operation, concluding by repeating the remark delivered in a menacing tone, "You are now advised," manifestly referring to the withdrawing of my exequatur. I then replied to him with firmness, but calmly, "General, I have acted

within the limits of my official duty throughout this interview held with you in defense of these American citizens, and in proof of my assertion I have just shown you the telegram received from the Secretary of State of the United States in regard to Aguirre; and furthermore, I must assure you that I will continue to perform my official duties so long as I am consul-general of the United States in this city;" and with that I took my leave.

On the next or following day the menacing remarks of the Governor-General were confirmed by telegrams from Madrid, published in the Habana newspapers, to the effect that he had asked the Madrid Government to request my recall.

I respectfully submit the above report to the consideration of the Department, with the assurance that the menace of the Governor-General was entirely without cause or provocation on my part; and having been uttered by him while I was performing the official duty of defending the persons of two American citizens who had been wrongfully subjected to the military jurisdiction of the island of Cuba, it was therefore both out of time and place.

And, in conclusion, I have also to ask the attention of the Department to the fact that the complaint I presented to the Governor-General against the denial of the intendant-general of the island of the right of the United States consul-general at Habana to address him officially in representation of American interests, a copy of which accompanied my dispatch No. — of April —, 1893, notwithstanding my several solicitations, has not yet been answered by order of the Governor-General.

I am, etc.,

RAMON O. WILLIAMS,  
*Gonsul-General of the United States at Habana, Cuba.*

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*Mr. Springer to Mr. Uhl.*

No. 2502.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, May 7, 1895. (Received May 13.)*

SIR: With further reference to the case of Julio Sanguily, I have now the honor to transmit herewith copy and translation of a communication from his excellency the segundo cabo, acting Captain-General, dated the 6th instant, in answer to the communication of this office of the 25th ultimo, which contained a solemn protest against the subjection of Mr. Sanguily for a second time to a military court and his being put "incomunicado," or into solitary confinement, from the 24th of April, pending such military inquiry, despite the decree of Governor-General Calleja, of March 16, inhibiting or waiving military jurisdiction.

While professing the desire to scrupulously comply with the terms of the protocol between the United States and Spain of January 12, 1877, it will be observed that this Government sees no impropriety of holding an American citizen subject to a military jurisdiction pending inquiry and investigation for proofs to be used against him and furnishing copies of the same upon transfer of his case to a civil court of ordinary jurisdiction for trial. It claims there is no essential difference between military procedure or indictment and the actual trial of the case.

Very respectfully, your obedient servant,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

[Inclosure I in No. 2502.—Translation.]

*The Acting Captain-General of Cuba to Mr. Williams.*CAPTAIN-GENERALCY OF THE EVER FAITHFUL ISLAND OF CUBA,  
OFFICE OF CHIEF OF STAFF,  
*Habana, May 7, 1895.**To the Consul of the United States of America at Habana.*

SIR: I have received the communication which, under date of the 25th April last, you addressed me, requesting me, in virtue of the agreement of January 12, 1877, between Spain and the United States, to relinquish cognizance of the military jurisdiction in the cause now being prosecuted against Mr. Julio Sanguily and others, on account of the kidnapping case of Don Antonio Fernandez Castro; and in view thereof, in order to prove to you that in the present case justice has proceeded with the moderation which is bound to be observed in all its decisions, watching not only for the interests of public law, but also for private rights. I again reproduce my communication of the 29th April last, in consequence of another cause, which was also being prosecuted against the same citizen and Mr. Jose Timoteo Aguirre Valdes, for rebellion.

In my firm intention of scrupulously complying with the aforesaid agreement, I would have sooner ceased in the cognizance of the fact being tried in said cause, but there existed the absolute necessity of not only proving the status of American citizenship of said party, but also the accusation pending against him in the said kidnapping case.

Up to the present it was not a question of being tried by a court-martial, but rather of proving the participation that might have been taken in the acts of which he is accused, and between the two, judicially, there is an essential difference, and it can not be denied that the National State has powers based on the general rules of international law to attend speedily and within its own legislation to practice all the proceedings required in verification of the offenses committed within its territory and to determine the culpability of those who may have taken part therein.

The status of American citizenship of Mr. Julio Sanguily having been established in the two causes referred to under date of the 4th instant, I decreed the inhibition in favor of the ordinary jurisdiction in the cognizance of the cause which was being prosecuted by reason of said kidnapping case, wherein the same might refer to the said citizen, allowing at once his communication (release from solitary confinement) in the fortress where he was confined, at the disposition of said jurisdiction and to which I shall shortly transmit the corresponding copy of the proceedings showing the degree of guilt, that by the competent court it shall duly proceed as corresponds thereto.

God guard you many years.

JOSE ARDERIUS, *The General 2do Cabo.*

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[Telegram.]

*Mr. Uhl to Mr. Springer.*

DEPARTMENT OF STATE.

*Washington, May 21, 1895.*

Carillo's case, involving most important principle, has been presented by United States minister to Spain. In case of Aguirre and Sanguily you will file formal protest declining to recognize validity of military jurisdiction in preliminary stage.

The treaty of 1795 excludes the exercise of military jurisdiction altogether and requires arrests to be made and offenses proceeded against by ordinary jurisdiction only. Protocol merely recognizes, declares, and explains this treaty right. Military arm has no judicial cognizance over our citizens at any stage. Even arrest, when made by military power, is by a conventional figment deemed to have been a civil act. By no fiction can proceedings of military judge instructor be deemed the act of an ordinary court of first instance. Assumption of such cognizance in Aguirre case and rearrest of Sanguily, after submission

to civil court, apparently for mere purpose of asserting military jurisdiction in summary proceedings, were an exercise of functions against which you will enter protest, reserving all rights of this Government and its citizens in the premises.

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*Mr. Springer to Mr. Uhl.*

No. 2507.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, May 25, 1895.*

SIR: I have the honor to acknowledge the receipt on the 22d instant of your telegram of the 21st instant, relative to the cases of the American citizens Carrillo, Sanguily, and Aguirre, with instructions to file a formal protest in the cases of the last two named, declining to recognize the validity of the military jurisdiction in any stage of the proceedings instituted against them by the authorities of this island.

I have therefore to-day presented a formal protest to his excellency the Governor-General in a communication in which I have set forth the views of the Department expressed in said telegram, and protested in the name of the Government of the United States, reserving all its rights and those of its citizens in the premises.

To aid the dispatch of business, I accompanied my communication to the Governor-General with a translation thereof into Spanish, and also transmit a copy of the same to the Department.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

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[Inclosure in No. 2507.]

*Mr. Springer to the Governor-General of Cuba.*

U. S. CONSULATE-GENERAL,  
*Habana, May 25, 1895.*

EXCELLENCY: With further reference to the cases of the American citizens, Julio Sanguily and Jose Maria Timoteo Aguirre, and your excellency's communications of the 29th April and 4th May, in reply to the communications which this office had the honor to address to your excellency on the 24th and 25th April, respecting the delay in the delivery of said American citizens to the civil jurisdiction for trial, and in protest of the proceedings hitherto practiced or that might thereafter be practiced in the procedure against them under military jurisdiction, I have now, in obedience to instructions of my Government, to lay before your excellency the following:

Upon learning of the arrest of the said American citizens, Sanguily and Aguirre, on the 24th of February last, by the military authorities of this island, this office immediately informed your excellency that the said parties were citizens of the United States, and asked that your excellency be pleased to order the strict observance of the treaty stipulations between the United States and Spain in the trial of said citizens for the alleged offenses for which they were arrested.

Subsequent correspondence upon the subject of their citizenship conclusively proved that each had fully complied with the requirements of the "law relating to foreigners," of July 4, 1870, and local police regulations, in respect to their inscription and recognition as such citizens of the United States, and their acquired domicile in this country. Therefore His Excellency Governor-General Calleja, under date of the 16th of March, decreed the inhibition of the military jurisdiction in the case of Sanguily and ordered its transfer to a court of the civil jurisdiction; and your excellency, on the 29th of April, decreed to the same effect in the case of Aguirre.

But, from the opinions of your auditor de guerra (war solicitor), it appears that both citizens have been held ever since by the military jurisdiction at the disposition of the special judge who has cognizance of the cause instituted in investigation of the alleged offenses for which they were arrested, and have been within the

period of preliminary proceedings or "sumario," and, therefore, the cognizance of a court-martial as yet is disclaimed, and, treating only of investigation and procuring of evidence for the trial, there is declared to be an essential difference in being indicted (procesado) and the actual trial by court-martial.

In the case of Sanguiy, he was again subjected to military jurisdiction on another charge, but kept in solitary confinement (incomunicado) some twelve days and deprived of all intercourse with his counsel whom he had engaged for his defense, and with his family and friends.

In your excellency's communication of the 4th of May, while stating that you had inhibited the military jurisdiction in favor of the civil jurisdiction for the trial of said citizens, your excellency also declared that you had ordered the special judge of instruction in the cause against Sanguiy and sundry others for conspiracy for rebellion to extract copies of certain parts of the same affecting Sanguiy and Aguirre to be transmitted shortly to the ordinary jurisdiction by which they should be tried for the crimes imputed to them.

But in the cases of these American citizens, the Government of the United States declines to recognize the validity of the military jurisdiction in the preliminary stage as well as in the procedure and trial. The treaty celebrated between the United States and Spain of the 27th October, 1795, in its seventh article, excludes the exercise of military jurisdiction altogether, and requires "in all cases of seizure, detention, or arrest for debts contracted or offenses committed, by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases."

The protocol of January 12, 1877, recognizes, declares, and explains this treaty right. The military arm has no judicial cognizance over citizens of the United States at any stage, and even the arrest when made by military power is by a conventional figment deemed to have been a civil act. But by no fiction can the proceedings of a military judge instructor be deemed the act of an ordinary court of first instance, and the assumption of such cognizance in the case of Aguirre, and the rearrest of Sanguiy after inhibition of the military jurisdiction and the submission of his case to a civil court, apparently for the mere purpose of asserting military jurisdiction in summary proceedings, were an exercise of functions against which I am instructed by my Government to enter its most formal protest, as I now do, reserving all the rights of the Government and its citizens in the premises.

I have, etc.,

JOSEPH A. SPRINGER,  
Vice-Consul-General.

*Mr. Uhl to Mr. Springer.*

No. 1087.]

DEPARTMENT OF STATE.

*Washington, June 10, 1895.*

SIR: I am in receipt of your dispatch No. 2507, of the 25th ultimo, with inclosed copy and translation of a communication addressed by you to the Governor-General in obedience to the Department's telegram of the 21st ultimo, protesting against the validity of military jurisdiction in the cases of Carrillo, Sanguiy, and Aguirre, in any stage of the proceedings instituted against them by the Cuban authorities.

I am, etc.,

EDWIN F. UHL.

[Telegram.]

*Mr. Uhl to Mr. Springer.*

DEPARTMENT OF STATE,

*Washington, June 18, 1895.*

On May 6 Sanguiy was still in military prison, his transfer to civil jurisdiction being promised as soon as military proceedings could be

copied. If not yet transferred, you will demand that military imprisonment cease forthwith and that he be speedily given civil trial on charges preferred by civil process, or else released. Telegram sent you May 21 and your protest thereunder make clear the refusal of this Government to recognize military jurisdiction in first instance.

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*Mr. Springer to Mr. Uhl.*

No. 2521.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, June 21, 1895.*

SIR: I have the honor to acknowledge the receipt of your telegram of 18th instant.

In reply, I have to state that the transfer of the causes of Sanguily, as well as the case of Aguirre, was made to the civil jurisdiction about the middle of May last, and are now being prosecuted before the judge of the Cerro district court, specially assigned thereto, and will be decided in special part of this superior court (*sala especial de la exina audiencia*).

The cases of Sanguily and Aguirre present the anomaly that, whereas they were arrested upon the breaking out of the insurrection upon the charge of conspiracy and attempt at rebellion, they have not yet been brought to trial, while many others arrested subsequently, not upon suspicion or attempts, but for overt acts of participation in the insurrection, and those who presented themselves to the authorities within the period in which was promised pardon for their offense, have been released and are now at liberty.

Only the three American citizens, Sanguily, Aguirre, and Carrillo, arrested solely on suspicion and charged with attempt at rebellion, were subjected to extreme arbitrary measures and harsh treatment by the military authorities before the efforts of the United States Government succeeded in getting their cases transferred to the civil jurisdiction. In the case of Carrillo there was no process instituted, no indictment drawn, but he was held under an arbitrary gubernative order until released and deported to the United States.

There seems to be no reason for the intentional delay in prosecuting the charges against Sanguily and Aguirre and their continued imprisonment, and the deduction is obvious that they are discriminated against on account of their quality of being American citizens.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

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*Mr. Springer to Mr. Uhl.*

No. 2523.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, June 25, 1895.*

SIR: I have the honor to acknowledge the receipt of your telegram dated 24th instant, reading:

WILLIAMS, *Consul-General, Habana:*

Department is informed Aguirre is required, in violation of law, to deposit \$10,000 or have his property seized as security for costs, and that his lawyer, in violation of treaty, has not been permitted to examine charges against him. This Department regards such a proceeding as unwarranted. You will forthwith investigate the situation and report by cable the facts.

UHL.

After an interview with the counsel of defense of Aguirre, and also Sanguily, I have cabled the following, which I now confirm, with the observation that the word "bail bond" is not used in the sense of a security given for the release of a prisoner, but a special bail in court to abide the judgment.

ASSISTANT SECRETARY OF STATE,  
*Washington, D C. :*

Bail bond of \$10,000 required of Aguirre or in default thereof embargo of property for costs is according to law, but his lawyer has not yet been permitted to examine charges, the court stating that all "sumarios" are secret according to Spanish criminal law. Bond the same in Sanguily's case, and in addition one for \$20,000 for charge of kidnapping.

SPRINGER, *Vice-Consul-General.*

I am informed by Sanguily's lawyer that another person was connected with him on the same charges or indictment of kidnapping a certain Geraldo Portela, of this city, who was arrested subsequent to Sanguily, and confined in the Morro Castle. The case of Portela was instituted before the military authorities, while that of Sanguily was passed to the civil jurisdiction. Portela was not brought to trial, but his case was quashed and he has been released for nearly a month, and under no kind of restriction, whereas Sanguily is still imprisoned in the Cabana fort, awaiting trial.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

*Mr. Adee to Mr. Williams.*

No. 1100.]

DEPARTMENT OF STATE,  
*Washington, July 8, 1895.*

SIR: Your dispatch No. 2521, of the 21st ultimo, relative to the cases of Sanguily and Aguirre, has been received.

The contents of the dispatch have been communicated to Manuel Sanguily and Gen. N. L. Jeffries.

I am, etc.,

ALVEY A. ADEE.

*Mr. Adee to Mr. Williams.*

No. 1101.]

DEPARTMENT OF STATE,  
*Washington, July 8, 1895.*

SIR: Referring to your dispatch No. 2523, of the 25th ultimo, in which you state that another person was arrested subsequently to Mr. Sanguily, on the same charge of kidnapping, and that he was tried, the indictment quashed, and the person released, you are instructed to call the attention of the authorities to the discrimination shown against Mr. Sanguily in holding him for trial and quashing the indictment against his alleged accomplice.

I am, etc.,

ALVEY A. ADEE.

[Telegram.]

*Mr. Adee to Mr. Williams.*

DEPARTMENT OF STATE,  
*Washington, July 23, 1895.*

From independent sources, apparently authentic, Department is advised that Habana volunteers parade 24th instant and may demand

instant execution of Sanguily and Aguirre and probably other Americans. American citizens under treaty provisions are admittedly entitled to trial by ordinary civil procedure. Department is convinced that authorities will never yield to a demand for summary proceedings but ask that precautions will be taken to prevent extrajudicial violence. The gravity of the situation which would result should any injury be done them can not be overestimated. Communicate this to the proper authorities.

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*Mr. Williams to Mr. Adee.*

No. 2541.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, July 24, 1895.*

SIR: I telegraphed you in substance this morning in answer to your telegram of yesterday that on communicating its purport last evening to General Arderius, the acting Governor-General, he asked me to assure you there was no ground whatever for fearing that the volunteers might demand the instant execution of Sanguily and Aguirre, or of other Americans; that the volunteers had obtained permission to parade to-day, it being the saint's day of the Queen Regent, in the supposition that Gen. Martinez Campos would be present to review them, but he being absent the parade had been suspended.

From my own observations and sense of the personal security of Americans, I added that I saw no cause for apprehension and that perfect discipline and subordination existed among the troops and volunteers.

The acting Governor-General appreciated the communication of the Department as a friendly act, and attributed the false reports upon which it was founded to machinations of the enemies of Spain, who desire to create a misunderstanding between the two Governments.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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*Mr. Williams to Mr. Uhl.*

No. 2543.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, July 27, 1895.*

SIR: Herewith I inclose a copy of a letter dated the 25th instant at West Tampa, Fla., and addressed to me with a draft of \$150 on the Bank of the Republic, New York, by Messrs. Theodore Perez & Co. for delivery to Mr. Julio Sanguily, at the Fortress Cabana, this city. I return the said letter and draft, with the respectful request that the Department return them to Messrs. Theodore Perez & Co. with the suggestion that those gentlemen forward them direct to Mr. Sanguily, as this office ought not to take charge of his private correspondence, unless otherwise directed by the Department.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2543.]

*Messrs. Teodoro Perez & Co. to Mr. Williams.*WEST TAMPA, FLA., *July 25, 1895.*

DEAR SIR: We beg to inclose you draft on New York for the amount of \$150, which we beg of you to cash and deliver the amount to Mr. Julio Sanguily, the American citizen now in prison in Habana.

We beg of you, too, to deliver him the inclosed letter.

With respect, remain yours,

TEODORO PEREZ &amp; CO.

*Mr. Williams to Mr. Adee.*

No. 2549.]

UNITED STATES CONSULATE-GENERAL,

*Habana, August 2, 1895.*

SIR: With reference to previous correspondence relating to the case of Mr. Julio Sanguily, I have now the honor to inform the Department that Mr. Miguel F. Viondi, the lawyer chosen by Mr. Sanguily for his defense, tells me that the judge encharged with the examination proceedings has assured him that the process (sumario) will be sent this week to the trial court.

Mr. Viondi will then see it and make me a synopsis of it. As soon as it is received I will send a copy of it to the Department.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

*Mr. Williams to Mr. Adee.*

No. 2558.]

UNITED STATES CONSULATE-GENERAL,

*Habana, August 7, 1895.*

SIR: I have the honor to inclose a copy of a letter, dated the 5th instant, received at this office to-day from Messrs. Teodoro Perez & Co., of West Tampa, Fla., asking me to acknowledge the receipt of a draft of \$150, the same which I returned through the Department in my dispatch No. 2543, on the 27th ultimo. I beg the Department to proceed with the present case as in its judgment it may deem best.

As the family of Mr. Sanguily resides in this city, I would recommend Messrs. Teodoro Perez & Co. to address him through it. At any rate, it would be highly injudicious and indiscreet on the part of this office to become the medium for the transmission and delivery of the private correspondence of those gentlemen.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2558.]

*Messrs. Teodoro Perez & Co. to Mr. Williams.*WEST TAMPA, FLA., *August 5, 1895.*

DEAR SIR: On July 25 we addressed you a letter inclosing a draft for \$150, to be delivered to Mr. Julio Sanguily.

Will you be kind to acknowledge receipt of same.

Yours, respectfully,

TEODORO PEREZ &amp; CO.

*Mr. Adee to Mr. Williams.*

No. 1119.]

DEPARTMENT OF STATE,  
Washington, August 7, 1895.

SIR: Your dispatch No. 2543, of the 27th ultimo, inclosing a letter and draft which you were requested to deliver to Mr. Julio Sanguily, has been received.

Your action in not delivering the letter is approved, and Messrs. Teodoro Perez & Co. have been so informed. It would seem, however, that with the knowledge and assent of the authorities you could hand the proceeds of the draft to Mr. Sanguily with a statement of the source from which it comes. The draft is returned to you for delivery in accordance with the above suggestion.

I am, etc.,

ALVEY A. ADEE.

*Mr. Williams to Mr. Adee.*

No. 2570.]

UNITED STATES CONSULATE-GENERAL,  
Habana, August 17, 1895.

SIR: I have the honor to acknowledge the receipt of the Department's instruction, No. 1119, of the 7th instant, approving the return, with my dispatch, No. 2543, of the 27th ultimo, of the letter sent by Messrs. Theodore Perez & Co., of Tampa, Fla., under cover to this consulate-general for delivery to Mr. Julio Sanguily; as also to inclose herewith a duplicate and triplicate receipt signed by the same Mr. Julio Sanguily for the sum of \$164.25 Spanish gold, as the proceeds of the draft of \$150 United States currency, signed by J. B. Anderson at Tampa, Fla., July 25, 1895, on the National Bank of the Republic, New York, and indorsed and sold by me to Messrs. Laston Bros., Habana, at 9½ premium of exchange.

Prior to taking charge of the negotiation of this draft, I made a visit, in pursuance of the Department's suggestion, to the Acting Governor-General, General Arderius, to give him a statement of its source, and to ask and obtain his consent for the delivery of its proceeds to Mr. Sanguily. The general readily and cordially consented, with the remark that my application first for the consent of the authorities was the correct course in the matter on the part of this consulate-general.

I beg the Department to send the triplicate receipt to Messrs. Theodore Perez & Co., at Tampa, Fla., with attachment of the duplicate for filing to this dispatch.

I am, etc.,

RAMON O. WILLIAMS,  
Consul-General.

[Duplicate.]

FORTRESS CABANA, Habana, August 17, 1895.

Received of Ramon O. Williams, consul-general of the United States at Habana, the sum of \$164.25 in Spanish gold, equivalent to a draft to his order, signed by G. B. Anderson, at Tampa, Fla., July 25, 1895, on the National Bank of the Republic, New York, for \$150 United States currency, equal to \$164.25 Spanish gold.

JULIO SANGUILY.

*Mr. Williams to Mr. Adec.*

No. 2580.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, August 27, 1895.*

SIR: With reference to my dispatch No. 2549, of the 2d instant, I have the honor to report that Mr. Miguel Viondi, the advocate of Mr. Julio Sanguly, has informed me that he has been disappointed in his hope of the closing and submission of the examination proceedings of this case from the lower to the upper or trial court, as before expressed by him, and transmitted to the Department in my said dispatch No. 2549, and now tells me that, the proceedings having been delayed beyond his expectation by the lower court, he petitioned it on the 19th instant to be allowed to view them; but this has been refused, on the ground that the court has or is about to issue commissions for the taking of the testimony of parties now in Spain. This, of course, as he says, will prolong the delay already incurred in bringing the case to trial.

By reason of this delay and the prospect of its prolongation on the part of the lower court, Mr. Sanguly has addressed a communication in the Spanish language, dated the 20th instant, to the honorable Secretary of State, which he sent me for transmission on the 24th instant. On receiving this communication, I observed to the bearer that as the official language of the Government of the United States is the English, and as Mr. Sanguly is an American citizen, that if he believed he had reasons justifying him to address the honorable Secretary, that, in my opinion, he should have done this in the English and not in a foreign language. But this suggestion not having been heeded, I accompany the communication herewith.

I have also to inform the Department that the lower court refused to grant the petition of Mr. Alfredo Zayas, the advocate of Mr. José Mas Timoteo Aguirre, who, likewise, solicited at the same time with Mr. Viondi, the view (*la vista*) of the proceedings in the case of his client; and that in consequence of this refusal he has complained to the upper court, as authorized under the code of criminal procedure, instead of his client appealing direct to the honorable Secretary of State, and I understand that the chief justice has the complaint of Mr. Zayas now under consideration.

In this connection I beg to observe that this consulate-general is frequently called on by friends of Mr. Sanguly and Mr. Aguirre to undertake proceedings before the court and before the Government in their cases, apparently under the belief that their defense is encharged to this office. And notwithstanding that on many of these occasions I have explained in answer that neither article 7 of the treaty of 1795 nor the explanatory protocol of the 12th of January, 1877, confer any authority or right on the diplomatic and consular officers of Spain to interfere or take part in the judicial proceedings that might take place regarding Spanish subjects under similar allegations in the United States, nor that such authority is conferred on the diplomatic and consular officers of the United States with regard to American citizens alike charged within the dominions of Spain; and that the defense of Spanish subjects and American citizens before the courts is left exclusively to the law officers of the respective countries; still, it is often asked if it is not primarily encharged with the defense in these cases, how came it to take upon itself the authority to solicit of the Governor-General their transfer from the court-martial to which they had been subjected, to a civil court for trial? And that when it is explained to

them that by article 19 of the treaty of 1795 that the consular officers of the United States within the dominions of Spain, and conversely that the consular officers of Spain within the jurisdiction of the United States, enjoy, respectively, the privileges and powers of those of the most favored nation; and that in consequence this consulate-general is invested, in accordance with article 9 of the consular treaty of February 22, 1870, between Spain and Germany, with the right to complain to the Governor-General of this island against the infraction of all treaties and agreements between the United States and Spain; and that inasmuch as the protocol of the 12th of January, 1877, was infringed from the start by the subjection of these citizens to the military jurisdiction, that this office being duly authorized thereto, under the said article 19 of the treaty of the United States with Spain, and article 9 of that between Spain and Germany, did not hesitate for a moment to request the transfer of these American citizens to the civil jurisdiction for trial; but that the moment the Governor-General complied with the protocol by their transfer to the civil court, the intervention of this office ceased and that of the law officers began; and that if no mistake had been made in the procedure established in the protocol there would have been neither occasion nor authority for the intervention of this office in these cases, yet none of these explanations seem to convince or satisfy.

As illustrative of the matter, I would respectfully recall the case of Mr. Cirilo Pouble, which occupied the almost daily attention of the Department and this consulate-general for four years; for notwithstanding he appointed his own advocate, still his demands and those of his friends were not made on his advocate, but almost entirely on the consul-general, even to the extent of the presentation of a complaint through an attorney at Washington to the Senate of the United States. Similar expectations were also raised in the Oglesby case.

For these reasons I would respectfully submit the question as to the propriety of the employment by the Department of legal counsel to this consulate-general; and in the case of its affirmative resolution I beg to recommend the name of Mr. Antonio Govin, a distinguished member of the bar of this city.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure in No. 2580.—Translation.]

*Mr. Sanguily to Mr. Olney.*

Julio Sanguily, a citizen of the United States of America, who has been arrested by the Spanish authorities and is now imprisoned in the fortress called "La Cabaña," hereby states that criminal proceedings have been instituted against him and he has been incarcerated in violation of Spanish law, and on account of an act with which he has been falsely charged, with a view to injuring his good name.

Anyone examining the case calmly from its two points of view must become convinced that your petitioner is prosecuted and punished either for the reason that he is a citizen of the United States of America, or for a political idea for which, even if any such idea had been entertained, he would have to be acquitted according to Spanish law.

*First case.*—That he must be acquitted according to Spanish law.

Your petitioner is charged with an intention, a thought, an idea which, even if he had begun to put it into execution, would be called by Spanish law, as it would by the penal law of every country in the world, tentative; that is to say, something which technically falls far short of being a crime, since a crime begins with the performance of the act.

Your petitioner was surprised at his home, in the bosom of his family, and placed under arrest by military authorities, who subsequently, at the instance of the United States Government, turned the case over to the civil authorities. Both the military and civil authorities are agreed that your petitioner can be held responsible for nothing more than an attempt to commit an offense, which, in law, as already remarked, falls far short of the offense itself.

Now, the Spanish law, by a proclamation issued by General Callejas, pardoned all persons guilty of rebellion, provided that they surrendered to the authorities before the expiration of fifteen days after the issuance of the proclamation.

It is therefore evident that your petitioner, who, even if he were guilty of anything, would be guilty of a mere attempt to commit an offense, which is much less than the crime of rebellion for which a pardon was granted to those who rose in arms, but surrendered to the authorities within the time designated, is certainly included in the pardon granted by General Callejas, for it is not conceivable that this pardon should favor those who did more, and should injure and punish one who has never committed any offense.

In all cases, without exception, and in all penal systems, the law is interpreted in a manner favorable to the person charged with crime. Spanish citizens who took up arms against their Government have been pardoned in the manner above described, while your petitioner, who is charged with merely attempting to commit the same offense, has been suffering the horrors of imprisonment for six months, as if he were punished for a punishable intention because he is a citizen of the United States of America.

The act for which the undersigned is prosecuted does not, for the reason stated, subject him to condemnation. There is no ground for a prosecution in his case, and all that need be done is, when the charges against him are declared to be true, to require the Spanish Government to release an American citizen who is protected by the very Spanish law on the ground of which the proclamation of General Callejas was issued.

*Second case.*—He is falsely charged with the crime of kidnaping. Proof to the contrary.

After the Spanish military authorities found that they were not competent to institute proceedings against citizens of the United States, they deprived the undersigned of the privilege of seeing his counsel, and kept him in solitary confinement for twelve days.

This crime (kidnaping) was alleged to have been committed by your petitioner and Don Gerardo Portela, a Spanish citizen. The charges against both were in all respects identical. The prosecution, at the instance of the United States consul, was divided. One portion was turned over to the civil authorities, and the other remained in charge of the military. Well, the military authorities released Portela at once, and the civil authorities have kept your petitioner in prison for five months without any actual reason.

The difference in the treatment of the two parties can be explained in no other way than by considering that the one is a citizen of the United States of America, for which he is imprisoned, while the other is a Spanish citizen.

Your petitioner does not ask to be believed on his mere assertion. The United States consul at Habana has knowledge of all these antecedents, and, if the case requires it, can inform your Government as to the correctness of the statements made. And if these statements are true, how can it be that a citizen of the United States is allowed to remain in prison, and that the United States Government does not tell that of Spain that it must strictly obey the law?

The undersigned hopes that his Government will grant him the protection which, according to the Constitution of the United States, is his due. That Constitution has, in his case, been violated by the Spanish Government, and no protest has been made against this violation.

J. SANGUILY.

HABANA, August 20, 1895.

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Mr. Adee to Mr. Williams.

[Telegram.]

DEPARTMENT OF STATE.

Washington, September 3, 1896.

In view of protracted delay in Sanguiely case, of disregard of petition proffered by him on suggestion of authorities that it will secure his

release, and of acquittal of Gerardo Portela, jointly accused with him of kidnapping, the Department feels compelled to demand his immediate trial or release.

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*Mr. Williams to Mr. Adee.*

[Telegram.]

HABANA, September 6, 1896.

Aguirre just released and Sanguily's case will be tried soon.

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*Mr. Williams to Mr. Adee.*

No. 2585.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, September 6, 1895.*

SIR: I have the honor to acknowledge the receipt of your telegraphic instruction of the 3d instant.

Apprehending from those words of this telegram saying "of disregard of petition proffered by him on suggestion of authorities that it would secure his release" that a misrepresentation had been made to the Department, I telegraphed you on the following morning as follows:

Sanguily suggested and with the knowledge and consent of his advocate addressed a letter to this office soliciting its informal intervention for his release and embarkation, but I know of no petition proffered by him on suggestion of the authorities that it would secure his release. Will send copies of correspondence.

I now inclose a copy and translation of the communication which, in accordance with your said telegram, I addressed yesterday to his excellency the Governor-General asking for the speedy trial or the immediate release of Sanguily.

In this connection I also copy herewith my telegram of this date announcing the release of Aguirre and the early trial of Sanguily:

Aguirre just released and Sanguily's case will be tried soon.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 1 in No. 2585.]

*Mr. Williams to the Governor-General of Cuba.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, September 5, 1895.*

EXCELLENCY: In compliance with a special instruction received from my Government, I have to complain to your excellency against the unusual delay that is being observed by the court of the Cerro district of this capital in preparing the proceedings for submission to the higher or trial court in the case of Mr. Julio Sanguily, an American citizen, arrested and imprisoned at the Fortress Cabana since the 24th of February last. And in further support of this complaint I have to inform your excellency that I now learn with surprise that the court, after having had the examination of the charges and formation of indictment against Sanguily under its exclusive direction for the last six months, has just issued letters rogatory for the taking of evidence in Spain, which proceeding must necessarily prolong the delay already incurred to an indefinite time, contrary to the meaning of the agreement of the 12th of January, 1877, between the United States and Spain, with the subjection of this

American citizen in the meantime to all the bitter sufferings inseparable from imprisonment and loss of personal freedom; this being the more remarkable since Mr. Gerardo Portela, a Spanish subject, who was jointly accused with Mr. Sanguly of kidnapping, has been tried and acquitted, because of his innocence, by a competent court of the country.

Therefore, it being the opinion of the Government of the United States that the delay in bringing this American citizen to trial is unjustifiable, it has ordered me to bring this complaint to the immediate attention of your excellency, as the superior representative of the Government of Spain in this island, and to ask your excellency, as such representative, to please exercise your executive authority for the speedy trial or for the immediate release of Mr. Julio Sanguly, permitting myself to remind your excellency, in favor of this petition, of the declaration made on the part of Spain in the said agreement, which says:

"In view of the satisfactory adjustment of this question in a manner so proper for the preservation of the friendly relations between the respective Governments, and in order to afford to the Government of the United States the completest security and good faith of His Majesty's Government in the premises, command will be given by royal order for the strict observance of the protocol in all the dominions of Spain, and specifically in the Island of Cuba."

In conformity with these and the other provisions of the said agreement, and confiding in the good disposition always shown by your excellency in the fulfillment of the treaty obligations on the part of Spain toward the United States, I can not but trust that your excellency will, in the exercise of your executive functions, order either the speedy trial or the immediate release of the said American citizen, Mr. Julio Sanguly.

I avail myself, etc.,

RAMON O. WILLIAMS,  
Consul-General.

*Mr. Rockhill to Mr. Williams.*

No. 1145.]

DEPARTMENT OF STATE,  
Washington, September 7, 1895.

SIR: Your cable dispatch of the 6th instant has been received, as follows:

Aguirre just released and Sanguly's case will be tried soon.

Mr. Aguirre's friends have been informed of his release. Your report of the circumstances of his enlargement are awaited before commenting on this tardy relief of a citizen of the United States confined under conditions which have enlisted the lively sympathy and earnest efforts of this Government in his behalf.

You will continue to press for speedy and equitable treatment of Sanguly's case.

I am, etc.,

W. W. ROCKHILL.

*Mr. Williams to Mr. Adee.*

No. 2586.]

CONSULATE-GENERAL OF THE UNITED STATES,  
Habana, September 11, 1895.

SIR: With reference to my dispatch No. 2585, of the 6th instant, inclosing a copy and translation of the communication that, in accordance with your telegraphic instruction of the 3d instant, I addressed the Governor-General, asking for the speedy trial or release of Mr. Julio Sanguly, I now have the honor to transmit a copy and translation of the answer of his excellency thereto, dated the 6th instant.

You will please notice that he says in this answer that consuls are not invested with diplomatic functions, and therefore they can not rightfully present official remonstrances in affairs of government, and can only address themselves confidentially to the authorities for the purposes of inquiry and for reporting to their governments. Also that he makes the present explanations in the interest of harmony and good relationship, and can not repeat them should the Government of the United States not become convinced of their correctness; because not being invested himself with authority to treat upon such questions as the one at issue, this attribute residing solely in his Government, all remonstrances of this nature should, therefore, be addressed solely to it.

As related to this matter, and as showing the measure of the rights of this consulate-general to apply to the governmental authorities of the island, under article 19 of the treaty of the 27th of October, 1795, between the United States and Spain, I copy herein, translated, articles 9 and 19 of the consular treaty of the 22d of February, 1870, between Spain and Germany, which say:

ARTICLE 9. Consuls-general, consuls, vice-consuls, or consular agents shall have the right to address the authorities of their district in remonstrance against every infraction of the treaties or conventions existing between the two countries, and against whatever abuse complained of by their countrymen.

If their remonstrances should not be attended to by the authorities of the district, or if the decisions of the latter should not appear to them satisfactory, they may apply, in the absence of the diplomatic agent of their country, to the Government of the country where they reside.

And,

ARTICLE 19. All the provisions of the present convention will be applicable and have effect in all the territory of Spain, and also in all the territory of North Germany, with inclusion of the colonial possessions of Spain, subject to the reservations contained in the special régime of said possessions.

It is inferable from the explanations of the Governor-General that he may consider that, so long as our minister to Spain is present at Madrid, our diplomatic agent, as expressed above, is not absent from the country, this island being a part of the territory of Spain; and, therefore, this question and similar ones should, in his opinion, be presented by our Government to that of Spain through our legation at Madrid and not through this consulate-general, because of thereby recognizing in the latter a quasi diplomatic character. This view on the part of the authorities here has been already expressed to me before on occasions when I have had to converse with them on the subject of fines imposed by the custom-houses on our shipping for clerical errors in vessels' manifests. And in this connection I beg to refer to my dispatches Nos. 1075, 1080, 1085, dated, respectively, the 25th of January, the 4th and 5th of February, 1890; as also to my No. 1857, of the 11th of April, 1893, and to the Department's instruction No. 71 to our minister at Madrid, Mr. Palmer, of the 12th of March, 1890, and its No. 516, of the 19th of March, 1890, to this office.

In justice to Gen. Martinez de Campos, the present Governor-General, I can not but recognize in him a most friendly disposition and promptness in listening to all matters presented personally to his attention by this office, as will be seen from the copy accompanying of his unofficial note to me, dated also the 6th instant, in relation to the trial of Aguirre and Sanguily.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2586.—Translation.]

*Gen. Martinez de Campos to Mr. Williams.*MANSION OF THE GOVERNOR-GENERAL OF THE ISLAND OF CUBA,  
*Habana, September 6, 1895.*

SIR: I have received the official note in which you give me an account of the telegram received from the honorable Secretary of State, acting, of your nation, and in reply I believe myself in duty bound to say that you have complied with the order of your chief, and I am grateful for the courteous and attentive manner with which you have done it, and as is so customary with you on all occasions; but you must permit me to observe that consuls are not invested with diplomatic functions, and therefore they can not with right present official remonstrances in affairs of government—they can only address themselves confidentially to the authorities for the purpose of inquiry and of reporting to their governments.

But as the said telegram, in the part you communicate to me, appears to involve a charge respecting the prolongation of the case of Sanguily and the discharge of Gerardo Portela, who figured together on initiating the process against them for kidnaping, I must say to you that the innocence of Portela having been proved he was set at liberty, but undoubtedly the same can not have happened with respect to Sanguily, and therefore the process with respect to him and others still continues; besides, owing to Sanguily being an American citizen, and the reclamation of that consulate of your worthy charge, the process was divided in consequence, in accordance with the treaty of 1877, the part pertaining to Sanguily passing to the civil or ordinary jurisdiction and that of the others accused jointly with him remaining subject to the military jurisdiction, whose proceedings are usually more rapid.

These indications, which for the sake of harmony and good relationship I make you, could not be continued if the Government of your nation should not become convinced of their correctness, for not being myself invested with authority to treat this question, and it being solely an attribution of my Government, all remonstrances should be addressed to it.

God guard you many years.

ARSENIO MARTINEZ DE CAMPOS.

[Inclosure 2 in No. 2586.—Translation.]

*Gen. Martinez de Campos to Mr. Williams.*

[Personal.]

THE GENERAL IN CHIEF OF THE ARMY OF OPERATIONS IN CUBA,  
*Habana, September 6, 1895.*

MY DEAR SIR AND FRIEND: As I promised you, Aguirre has just been released. No small effort has been needed, but I obviated all obstacles, saying that since Betancourt was in the insurrection it seemed to me that the issuance of rogatory letters became unnecessary.

I take pleasure in personally informing you of the above; also that Sanguily will be soon heard.

I avail, etc.,

ARSENIO MARTINEZ DE CAMPOS.

*Mr. Williams to Mr. Adce.*

No. 2588.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, September 12, 1895.*

SIR: I have the honor to submit a copy and translation herewith of a letter addressed to me in the Spanish language, under date of the 20th ultimo, by Mr. Julio Sanguily, in which he says that being sick, and under arrest without reason, as he affirmed, and desiring to be sent to the United States as soon as possible, as was done with Carrillo, Ruiz, and Vargas, he asked me to intercede with the Spanish authorities for his release.

I likewise accompany a copy of another letter, marked private, that he sent me in the English language with the one above mentioned, expressing the same desire.

I must here remark, in the order of narration, that Mr. Alfredo Zayas, the advocate of Mr. José Maria Timoteo Aguirre, called here on the morning of the same 21st último, to say to me that Mrs. Aguirre had told him that she had heard of the intended application of Mr. Sanguily and desired to know if a like effort could not be made by me in favor of her husband. I responded that I was willing to try it, if so desired; and when at a later hour the son of Mr. Sanguily brought me his father's two letters referred to above, and Mr. Aguirre being confined in the same fortress near by Mr. Sanguily, and the son living with his father, I told him that on returning there, inasmuch as Mr. Zayas had expressed himself favorable to such an effort, to tell Mr. Aguirre if he would apply in a letter authorizing me for the purpose, the consent of his advocate, Mr. Zayas, being then presumably given, that I would couple my effort in favor of Sanguily with another for him.

Accordingly, I called at 4 p. m., on the same 21st ultimo, on the Acting Governor-General Arderius, and after a most cordial reception I informed him of the object of my visit, which was to solicit, informally, for Messrs. Sanguily and Aguirre, if it was within his attributions, the quashment of the proceedings against them and their departure to New York. General Arderius then answered me in the same sense that Gen. Martinez Campos had replied to me on a previous occasion of which I had availed myself incidentally to speak to him against the delay of the examination proceedings in these two cases, and in favor of their early termination and submissions to the higher or trial court—that is, he answered that the cases were then beyond the attributions of his military jurisdiction and were under the civil jurisdiction; but he added that he would speak to the prosecuting attorney of His Majesty, and to the chief justice of the superior court of Habana, to see if a similar solution could be given to these cases as was given to that of Carrillo and others, who had been expelled on the grounds of being dangerous aliens, instead of subjecting them to trial. In this visit I showed the original letter of Mr. Sanguily in the Spanish language to General Arderius as proof of his application to this office, which I assured him had been made with the knowledge and consent of Mr. Viondi, his advocate. The general then asked me for a copy of it, and I promised to send it to him just as soon as I returned to the office, and did so, accompanying it by an unofficial note, copy of which is herewith inclosed, together with another of Sanguily's said letter of the 20th ultimo.

On the following day, the 22d, I also sent him an unofficial note, with copy of Aguirre's letter.

In these efforts to accomplish the desires of Messrs. Sanguily and Aguirre I visited General Arderius several times. In each visit something was gained in the direction of expediting the case of Aguirre, against whom the general told me there was only one charge, that of attempt of rebellion. He also told me that he would see if the delay in waiting for the answer to the commissions sent by the court for the taking of evidence in both cases in Spain could be obviated. But he added that he had understood there was a good deal more charged against Sanguily, and his case, therefore, did not offer the prospect of so speedy a termination as was observable with that of Aguirre.

At this stage of my efforts I received another letter from Mr. Sanguily, dated the 29th ultimo, in which he has not only attempted to shuffle on to me or on the authorities the origination of the suggestion of his solicitation, but he has also assumed the right to censure and instruct me.

The origin of his request to me is stated in the accompanying letter of Mr. Adolph Sanchez Dolz, the deputy consul-general, who communicated to me the request of Mr. Sanguily on delivering me his receipt for the \$150, subject of my dispatch No. 2570 of the 17th ultimo. The reputation of the deputy consul-general for veracity has never yet been questioned to my knowledge. And it was because of this unwarranted assumption of Mr. Sanguily that I telegraphed you on the 4th instant, referring to your telegraphic instruction of the day before, that—

Sanguily suggested, and with the knowledge and consent of his advocate, addressed a letter to this office soliciting its informal intervention for his release and embarkation, but I know of no petition preferred by him on suggestion of the authorities that it would secure his release. Will send copies of correspondence.

Apprehending from your words—

Of disregard of petition preferred by him on suggestion of authorities that it would secure his release—

that a misrepresentation had been made to the Department.

Notwithstanding, I have continued my efforts in favor of both these American citizens, the last time with Gen. Martinez Campos, who meanwhile had returned to Habana, as his accompanying private note of the 5th instant will show, informing me that Aguirre had been released and that Sanguily's case will be heard soon. I have since learned that the indictment against Sanguily of rebellion has been sent to the upper court for trial, and the remaining one, that of accomplice in the kidnaping of the sugar planter, Mr. Fernandez de Castro, is being expedited.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 1 in No. 25-8. Translation.]

*Mr. Julio Sanguily to Mr. Williams.*

FORTRESS CABANA, August 20, 1895.

DEAR SIR: Sick and under arrest in this fortress without reason, I desire to be sent as soon as possible to the United States. My case is identical with those of Carrillo, Ruiz, and Vargas, and I only ask what was granted them.

In this sense I address you the present, begging you to obtain from the Spanish Government my transfer to the United States, and anticipating my thanks, I remain,

Yours, very truly,

JULIO SANGUILY.

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[Inclosure 2 in No. 2588.—Private.]

*Mr. Julio Sanguily to Mr. Williams.*

LA CABANA, Tuesday, August 20, 1895.

MY DEAR FRIEND: If you can get me to go to the United States I'll be very much obliged to you. Also, if you can get me to go on Saturday next, because I want to go by Key West to wait for my family there that will go next week. I will leave Key West in the same steamer next week.

Yours, very truly,

J. SANGUILY.

## IMPRISONMENT OF JULIO SANGUILY.

[Inclosure 3 in No. 2588.—Translation.—Unofficial.]

*Mr. Williams to the Acting Governor-General of Cuba.*UNITED STATES CONSULATE-GENERAL,  
*Habana, August 21, 1895.*

DEAR SIR AND DISTINGUISHED GENERAL: With reference to the conversation that I had the honor to hold with you this afternoon with respect to Mr. Julio Sanguily and Mr. Jose Ma. Timoteo Aguirre, I have now the pleasure to inclose a copy of a letter addressed to me yesterday from Fortress Cabaña by the first named of these gentlemen soliciting me to intercede with the Government you so worthily represent to send him to the United States.

I am expecting a letter in the same sense from Mr. Aguirre, copy of which I will send you as soon as received.

I avail myself, etc.,

RAMON O. WILLIAMS.

[Inclosure 4 in No. 2588.—Translation.—Unofficial.]

*Mr. Williams to the Acting Governor-General of Cuba.*UNITED STATES CONSULATE-GENERAL,  
*Habana, August 22, 1895.*

DEAR SIR AND DISTINGUISHED GENERAL: Referring to the letter I had the honor to address you yesterday respecting Mr. Julio Sanguily, I now have the pleasure to inclose you copy of the one that I received to-day from Mr. Jose Ma. Timoteo Aguirre soliciting me to intercede with you to send him to the United States.

Day after to-morrow it will be six months since Mr. Aguirre and Mr. Sanguily have been subjected to provisional imprisonment without the examining judge of the court of the Cerro district having yet sent the process in either case to the upper court for trial; to which I have to add that it is only five days ago that the judge refused the reading (vista) of the process by the advocates of the accused, who, moreover, inform me that the judge now proposes to send commissions for the taking of evidence in Spain, thus prolonging the delay, which circumstances I do not doubt the Government will take into consideration.

I avail myself, etc.,

RAMON O. WILLIAMS.

[Inclosure 5 in No. 2588.—Translation.]

*Mr. Aguirre to Mr. Williams.*FORTRESS CABAÑA, *August 22, 1895.*

DEAR SIR: As a consequence of my unjust detention in this fortress, I have had misfortunes and sickness in my family, and desiring to go to the United States at the earliest possible moment, as was granted to the citizens Carrillo, Ruiz, and Vargas, whose cases were identical with mine, I beg of you to intercede with the Government for my transfer to the United States, and anticipating my thanks, I remain,

Yours, etc.,

JOSÉ MA. T. AGUIRRE.

[Inclosure 6 in No. 2588.—Translation.]

*Mr. Julio Sanguily to Mr. Williams.*FORTRESS LA CABAÑA,  
*Thursday, August 23, 1895.*

SIR: I do not know what passes. You sent to tell me about eight days ago, to me a prisoner in a fortress, that if I wished to recover my liberty, embarking, to write you a letter saying so. That is to say, you awakened in me the hope, and if this has not been with a serious purpose, a real cruelty has been practiced. Therefore, on your expressing yourself to me as you did, you must have had reasons for it; because you could not have forgotten my condition as prisoner when speaking to me of freedom.

It now turns out, according to what my lawyer writes me, that nothing has been done and things remain the same. Then why did you offer me my freedom and make me write you the letter I sent you?

And if it is the Government that has deceived you, why do you not exact of that Government the fulfillment of its promises? For it is certain that without a previous agreement with the Government you would never have taken upon yourself, from respect to my condition of prisoner, to offer me my freedom.

I regret to say that for the moment you appear weak to my eyes.

My present position and the hopes you inspired me with, and which I see vanished, authorize me to speak to you in this frank manner.

I believe my freedom to-day depends upon your energy, but as I can not influence you in any sense I limit myself to saying that you offered me my freedom, that many days have passed since then, and that I still remain suffering a most unjust imprisonment.

But this does not hinder me from subscribing myself your most affectionate friend,  
JULIO SANGUILY.

[Inclosure 7 in No. 2588.]

*Mr. Dolz to Mr. Williams.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, August 30, 1895.*

SIR: Referring to my visit on the 17th instant to Mr. Julio Sanguily, imprisoned at Fortress Cabana, to deliver him the proceeds of the draft of \$150 United States currency from Tampa, I have to say that, on returning to you the following Monday morning the receipt signed by him in triplicate, I told you that Mr. Sanguily had said to me that he was anxious to go at once to his home, New York, and led me to understand that he wanted you to intercede in his behalf with the Captain-General to have him sent to New York, as he had done with Carrillo, Vargas, and Ruiz, which I communicated to you on the said Monday morning.

You then told me to see him again, and say to him that if he would write you a letter to that effect, with the consent of his lawyer, you would try and see what you could do for him.

I am, etc.,

A. S. DOLZ,  
*Deputy Consul-General.*

[Inclosure 8 in No. 2588.—Translation.—Personal.]

*General Martinez de Campos to Mr. Williams.*

THE GENERAL IN CHIEF OF THE ARMY OF OPERATIONS IN CUBA,  
*Habana, September 6, 1895.*

MY DEAR SIR AND FRIEND: As I promised you, Aguirre has just been released; no small effort has been needed, but I obviated all obstacles, saying that since the Betancourt was in the insurrection it seemed to me that the issuance of rogatory letters became unnecessary.

I take pleasure in personally informing you of the above; also that Sanguily will be soon heard.

I avail, etc.,

ARSENIO MARTINEZ DE CAMPOS.

*Mr. Rockhill to Mr. Williams.*

No. 1152.]

DEPARTMENT OF STATE,  
*Washington, September 12, 1895.*

SIR: A reply to your No. 2580, of the 27th ultimo, in regard to the cases of the American citizens Julio Sanguily and José Maria Timoteo Aguirre, has been unavoidably deferred by pressure of business, but the telegraphic instruction to you of September 3 will show that the Department has urgently endeavored to protect the interest of these persons.

I inclose herewith for your further information a copy of a letter from Mr. Manuel Sanguily, the brother of Julio, calling attention to the

facts already known to the Department and to yourself, which constitute the peculiar hardship of his case, and the Department's reply thereto.

In the light of the prompt acquittal by military process of Sanguily's supposed accomplice in the act of kidnaping of which they stand charged, the continual detention of Mr. Sanguily for the purpose of prosecuting that charge against him in the civil way is quite inexplicable, and appears to work a wrong of which this Government feels it may properly take notice. The conventional agreement between the United States and Spain entitles our citizens to be promptly heard upon any charge of wrongdoing and to be afforded instant and abundant opportunity to prove their innocence and obtain simple justice in the civil courts of Cuba, with every guaranty of defense known to Spanish procedure. Your own dispatches indicate that you appreciate this and are earnestly endeavoring to advance the interests of Mr. Sanguily, and it is not doubted you will continue to do so until a final and satisfactory result is reached.

I am, etc.,

W. W. ROCKHILL.

*Mr. Uhl to Mr. Williams.*

No. 1160.]

DEPARTMENT OF STATE,  
*Washington, September 28, 1895.*

SIR: I have to acknowledge the receipt of your dispatch No. 2586, of the 11th instant, relative to the imprisonment of Sanguily and Aguirre, and referring to the letter from the Governor-General declining the right of exercise of diplomatic functions by consular officers.

I inclose copies of letters from the Department to the minister at Madrid and to the Spanish minister bearing upon this case.\*

I am, etc.,

EDWIN F. UHL.

*Mr. Williams to Mr. Uhl.*

No. 2617.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, October 9, 1895.*

SIR: I beg to inform you that I have continued my visits to the Governor-General when here, and when absent to the Acting Governor-General, to solicit the speedy presentation by the lower to the upper court of the case of Mr. Julio Sanguily, in which he is charged with having been an accomplice in the kidnaping last year of the sugar planter Mr. Fernandez de Castro by the bandit Manuel Garcia and released on a ransom, as publicly reported, of \$15,000, obtaining on each visit the assurance that they would use their endeavors with the judiciary for bringing the case to a speedy trial.

I understand that Mr. Viondi, the lawyer appointed by Mr. Sanguily, is giving constant attention to the defense.

I am, etc.,

RAMON O. WILLIAMS.

\* Printed, together with subsequent correspondence on the same subject, under the title of "Right of consul-general to prevent remonstrances," in *Foreign Relations*, 1895, Part II, pp. 1209-1214.

*Mr. Williams to Mr. Adee.*

No. 2621.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, October 14, 1895.*

SIR: With reference to the Department's instruction, No. 1148, of the 9th September last, and to my dispatch, No. 2588, of the 12th of same month, concerning the facts relating to the suggestion or message sent me by Mr. Julio Sanguily through Mr. Sanchez Dolz, the deputy consul-general, on the occasion of the delivery to him, with the consent of the Acting Governor-General, of the money sent him from Tampa, Fla., and mentioned in previous correspondence, I now beg to inclose for the information of the Department a copy of the letter addressed me on the 24th ultimo by the same Mr. Sanchez Dolz, saying—

That he never manifested to Mr. Julio Sanguily in my name that as the result of an interview held by me with General Arderius, Acting Governor-General, that if he wished to be released and sail to the United States, he should demand it by means of a petition.

I am, etc.,

RAMON O. WILLIAMS.

[Inclosure 1 in No. 2621.]

*Mr. Dolz to Mr. Williams.*UNITED STATES CONSULATE-GENERAL,  
*Habana, September 24, 1895.*

SIR: Referring to Mr. Manuel Sanguily's letter of the 28th ultimo, addressed to the Hon. Alvey A. Adee, Acting Secretary of State, and accompanying the Department's instruction No. 1148 of the 9th instant, I have to say that I never manifested to Mr. Julio Sanguily, imprisoned at Fortress La Cabana, in your name, "That as a result of an interview held by you with General Arderius, Acting Governor-General, that if he wished to be released and sail to the United States he should demand it by means of a petition."

Very respectfully,

A. S. DOLZ.

*Mr. Williams to Mr. Uhl.*

No. 2627.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, October 19, 1895.*

SIR: With reference to previous correspondence in relation to the arrest of Mr. Julio Sanguily, on the charge of rebellion, I beg to inform you that Mr. Viondi, his advocate, called at this office yesterday to tell me that the court had delivered him the proceedings in the case for his examination and for the preparation of his defense against the accusation formulated against Sanguily by the prosecuting attorney, which is based, as published by La Discusion of the 16th instant, upon the following counts:

1. That the accused was one of the most active promoters and instigators of the armed insurrection that broke out on the 24th of last February against the mother country for the purpose of declaring the independence of the island, he being designated to lead the insurrectional movement in the provinces of Habana, Matanzas, and Santa Clara, having issued, as leader and principal chief and as delegate of the revolutionary junta in New York, the appointments esteemed by him as contributing to that purpose, among them naming one Don José Yuocencio Aseuy, colonel of the insurgent army.

2. Those acts constitute a crime of rebellion, as defined in article 237, number 1, and punishable under article 236 of the penal code.

3. The accused is charged with direct participation in the promotion of the insurrectional movement.

4. There exist no mitigating circumstances worthy of appreciation.

5. The penalties proposed and solicited by the prosecuting attorney are those of imprisonment for life with chain, with the accessory ones of article 53 of the code, and payment of half the expenses of trial.

The proofs upon which the prosecuting attorney will base his action are: Documents, consisting of reports and depositions on folios 8 to 12 and 21 to 24; certificate on folio 24; letters on folios 36 and 46; expert examination on folio 88; letter on folio 94; official notes on folios 98 to 102; report on folio 107; official note on folio 115; letter of appointment on folio 236, and expert examination of same on folio 243.

I am, etc.,

RAMON O. WILLIAMS.

*Mr. Williams to Mr. Uhl.*

No. 2637.]

UNITED STATES CONSULATE-GENERAL,

*Habana, November 2, 1895.*

SIR: I have the honor to inform you that according to the notices published in the newspapers of this city the oral and public trial of the American citizen Mr. Julio Sanguily, charged with the crime of rebellion, has been fixed for the 28th instant before the superior court of Habana, the Government being represented by its prosecuting attorney, Mr. Federico Eujuto, and the accused by Mr. Miguel F. Viondi, advocate, and Mr. Luis P. Valdes, solicitor.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

*Mr. Williams to Mr. Uhl.*

No. 2640.]

UNITED STATES CONSULATE-GENERAL,

*Habana, November 4, 1895.*

SIR: With reference to my dispatch No. 2588, of the 12th of last September, accompanying copy and translation of a letter addressed to me by Mr. Julio Sanguily on the 29th of August last, in which he undertook to censure me, I now inclose a copy and translation of another, dated the 2d instant, expressing regret for his misunderstanding.

I have now only to say that, while considering that Mr. Sanguily's letter was entirely out of place, I have not felt myself offended, criticism being free, nor have I ceased to do everything possible within the circle of consular functions in his behalf.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2640.—Translation.]

*Mr. Sanguily to Mr. Williams.*

LA CABAÑA, *Saturday, November 2, 1895.*

MY DEAR FRIEND: Having learned that you consider yourself offended by me, I deem it my duty to address you, as I understand that you have continued to attend to my affairs as efficiently as previous to this incident. I would have written to you before, apologizing, had I been informed of the case before.

I now recognize that there was a misinterpretation on my part regarding the message you sent me. I supposed wrongly, and upon seeing how the illusions which I conceived were vanishing, I took the pen and wrote my impressions of the moment.

I never thought you would be offended, and, therefore, on being informed, as I stated above, of the impartial conduct observed by you even after the incident, I now address you, giving you all kind of satisfactions and subscribing myself, as ever, your affectionate friend,

J. SANGUILY.

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*Mr. Uhl to Mr. Williams.*

No. 1177.]

NOVEMBER 9, 1895.

SIR: I have received your three dispatches, Nos. 2621, 2627, and 2637, of the respective dates of the 14th and 19th ultimo, and 2d instant, all relating to the case of Mr. Julio Sanguiely.

From the second of these dispatches it appears that there has been delivered to Mr. Viondi, Mr. Sanguiely's advocate, a copy of the proceedings in the case for his examination and for the preparation of a defense against the accusation brought. From your summary of the charges, as printed in the newspaper *La Discussion* of the 16th ultimo, it appears that the counts against the accused relate only to the charge of sedition and rebellion, and it would seem that the additional charge which has heretofore been kept prominently in front in the discussion of his case, namely, alleged participation in an act of kidnapping committed more than a year ago, is not embraced in the present indictment. Your report of this point is, however, awaited. In the communication addressed to this Department by Mr. Manuel Sanguiely, brother of Julio, stress is laid upon this latter charge and upon the circumstance that the supposed partner of Mr. Sanguiely in the alleged kidnapping, Don Gerardo Portela, was promptly acquitted several months ago by the military court which took cognizance of that charge, and it has been argued that proceedings against him on the ground of sedition were untenable. I inclose for your information copies of recent letters from Mr. Manuel Sanguiely presenting this view of the case.

Your reports, however, of later date show the inapplicability in greater part of the arguments thus presented, and so far as the present state of the proceedings is disclosed this Department could not allege, as Mr. Manuel Sanguiely asserts, that the charge of sedition is frivolous and merely vexatious. This Government has continuously asserted the right of Mr. Sanguiely, as a citizen of the United States, to be tried on formulated charges by the ordinary resorts stipulated by the treaty of 1795 and by the protocol of 1877. This demand has been acceded to, and while the proceedings have been marked with what from our point of view appears to be extraordinary tardiness, I am not advised that there has been a tangible denial of justice in the case. It is due, however, to Mr. Sanguiely himself, as well as to the Government which has necessarily intervened for his protection, that he should be accorded as speedy a trial as may be consistent with his own interests and with the necessary opportunity for full examination of the charges and preparation of his defense. You are presumed to be in consultation with Mr. Sanguiely's advocate and should confer freely with him on this point, endeavoring to avoid as well unseemly haste to his disfavor as prolonged delays to his injury.

Your No. 2637 reports that the trial of Mr. Sanguiely on the charge of rebellion is fixed for the 28th instant.

You should keep the Department advised at every stage of the proceedings, and you will direct your endeavors to secure for Mr. Sanguily the fullest opportunity of defense against the charges now formulated.

I am, etc.,

EDWIN F. UHL.

*Mr. Uhl to Mr. Williams.*

No. 1180.]

NOVEMBER 14, 1895.

SIR: I inclose, with further reference to the case of Julio Sanguily, a copy of a letter addressed to the Department by his brother, Manuel Sanguily, in which he requests that you may be present at the trial which, as you report, has been set down for the 28th of this month.

You will accordingly attend the public proceedings as a spectator and make concise but sufficient report thereof to this Department.

I am, etc.,

EDWIN F. UHL,  
*Assistant Secretary.*

*Mr. Williams to Mr. Uhl.*

No. 2659.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, November 21, 1895.*

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 1180, of the 14th instant, directing me to attend the trial of Mr. Julio Sanguily to take place on the 28th instant, as a spectator, and to make a concise but sufficient report thereof to the Department, and to say that this instruction will be complied with.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

*Mr. Williams to Mr. Uhl.*

No. 2661.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, November 22, 1895.*

SIR: Mr. Miguel Viondi, advocate of Mr. Julio Sanguily, asks me for a copy of the communication dated September 6 last from General Campos in relation to the charge of kidnaping against his client, and which I had the honor to inclose in my dispatch No. 2586 of the 11th of said month. As the General mentions therein that Portela was released because of his innocence having been proved, and the charge against Sanguily being the same as that of the former, Mr. Viondi deems it convenient to acquaint the judge in the case with this fact in order that he may appreciate the opinion of the General Government in the matter and for the interest of his defendant.

I therefore beg permission of the Department to comply with Mr. Viondi's request.

I am, etc.,

RAMON O. WILLIAMS.

[Telegram.]

*Mr. Williams to Mr. Uhl.*

HABANA, November 29, 1895.

Trial of Sanguily commenced yesterday noon; adjourned at 5 o'clock; resumed to-day noon and finished at 3 o'clock. I attended as spectator in compliance with instructions of Department. His advocate, Viondi, has made a magnificent defense. Verdict not rendered yet.

[Telegram.]

*Mr. Williams to Mr. Uhl.*

HABANA, December 3, 1895.

Superior court of Habana sentenced Sanguily yesterday to imprisonment for life.

*Mr. Williams to Mr. Uhl.*

No. 2677.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, December 7, 1895.*

SIR: I have the honor to report that in accordance with the Department's instruction No. 1180 of the 14th ultimo I attended as a spectator the trial of the American citizen Mr. Julio Sanguily, which took place in this city on the 28th and 29th ultimo before the superior court of the province of Habana.

The court opened at 12 o'clock noon of the 28th ultimo, and on the entrance and seating of the accused the prosecuting attorney addressed his charges against him to the five sitting judges, the chief justice presiding, and on conclusion asked the court to declare Sanguily guilty, with sentence of imprisonment for life with chain. The charges summed up by the prosecutor and developed at the trial against Sanguily are in nowise materially different in essence from those transmitted to the Department in my dispatch No. 2627 of the 19th of October last.

The advocate for the prisoner, Mr. Miguel F. Viondi, followed in an earnest and eloquent defense, asking the court to declare the innocence and release of Sanguily on the grounds:

- (1) The absence of evidence to criminate.
- (2) The present trial being a continuation of the court-martial proceedings commenced on the 24th of February last, the day of the arrest of Sanguily, and against which this consulate-general protested by order of the Department before the governor-general on the 25th of April last because said military proceedings were in violation of the protocol of the 12th of January, 1877.
- (3) Claiming that the case of Sanguily comes under the proclamation of the governor-general published in the Gazette of February 27th of the present year, granting pardon to the rebels presenting themselves to the nearest municipal authorities, a translation of which proclamation I sent to the Department with my dispatch No. 2428, of that same date.

I understand that Mr. Viondi has determined to carry the case on appeal to the supreme court of Spain at Madrid. Accompanying herewith are two copies of the *Diario de la Marina* of the 29th and 30th of November and 3d instant, also two copies of the *Discusion* published in supplement, both newspapers giving full report of the proceedings as they actually occurred during the trials.

The current business of this office requiring my constant attention prevents me from devoting time to the translation of either of these reports.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[From the *Diario de la Marina*, Habana, Friday, November 29, 1895.]

#### THE SANGUILY CASE—PUBLIC EXAMINATION OF WITNESSES.

According to our previous announcement, the public examination of witnesses in the case of the Government against Don Julio Sangui y Garit, charged with the crime of rebellion, was commenced yesterday, the said case having previously been before the court of first instance.

At an early hour in the morning an immense crowd occupied the galleries of the court room, and it increased until it was found necessary to keep it back by force. At half past 10 Mr. Sangui y Garit arrived, under the escort of a picket of custodians of public order. He remained in the room set apart for prisoners until half past 12, when he was summoned to sit on the bench in the court room which is occupied by accused persons. Don Miguel F. Viondi, his counsel, and Attorney Luis P. Valdés were then likewise summoned.

The gentlemen of the press, who occupied their respective places, were then summoned by the doorkeeper; and here an unfortunate incident occurred. " \* \* All who thought proper to do so sat down at the table intended for the "fourth power of the State," which is certainly small enough, and neither the doorkeepers nor the policemen required anyone to present a permit to occupy that place, the result of which was that the shorthand reporter of the *Diario de la Marina*, our collaborator, Mr. Vera y Gonzalez, was obliged to work in the midst of the public throughout the session. Consequently our report can not be quite as extensive as might be desirable.

In the locality occupied by the civil court, the third section of the criminal court sat, the court consisting of the gentlemen to whom we referred yesterday. Among those present were the United States consul and many magistrates and lawyers. Quite a number of prominent ladies were likewise present.

#### DOCUMENTARY EVIDENCE.

Don Mannel Ramón Hernández, one of the court officers, acted as secretary and read the argument prepared by the Government attorney, and the defense to which we referred in our edition of yesterday evening, and the documentary evidence offered by both parties and accepted by the court.

#### CONFESSION OF THE PRISONER.

Don Julio Sangui y Garit, the prisoner, whose attitude was one of perfect serenity, said, in reply to the usual preliminary questions, that he was a native of Habana, 46 years of age, married, and the father of a family; by occupation a clerk, and that he had been a citizen of the United States since the year 1889. He was arrested on the 24th of February of the present year, between 7 and a quarter past 7 in the morning.

In reply to a question of the Government attorney, he said that, although it was true that on previous occasions—that is to say, before the rising took place—he had spoken of political matters with various persons, and had received, among other visits, that of Mr. Lopez Coloma, with whom he had spoken somewhat of Cuban affairs, he was in no way concerned in the uprising, and had had nothing whatever to do with it.

GOVERNMENT ATTORNEY. Could you not state anything more? Could you not tell what sort of a reference you made to Cuban affairs, and whether you were requested to head the movement in Habana, Matanzas, and Santa Clara?

PRISONER. I was, indeed, invited to head the movement, if I am not mistaken, but that was several days before, I do not remember exactly when.

GOVERNMENT ATTORNEY. What sort of a movement was it?

ANSWER. The revolutionary movement which began on the 24th of February, and which still continues.

Q. Did Mr. Lopez Coloma speak to you in his own name, or in that of other persons?—A. He spoke to me both in his own name and in that of other persons.

Q. And what did you say?—A. That I could not do it.

Q. When did you make your first statement before the military court?—A. On the 23d of February, at 11 p. m.

Q. What statement did you make with regard to the movement?—A. I told what I knew.

Q. But did you not state that, owing to its political significance, you might be compelled to take part in it?—A. I do not remember what I said. I asserted that there was no movement.

Sanguily's counsel here objected to these questions by the Government attorney, and referred to the statements already made by the prisoner.

As the presiding judge considered that the questions of the Government attorney were pertinent, the prisoner's counsel declared that he protested, notwithstanding that the presiding judge stated that a protest is proper only when the court refuses to permit a question, and the protest is put on record in order that an appeal for disregard of forms may subsequently be taken, which in the present case is of no practical importance.

The Government attorney continued to question the prisoner as to whether he had addressed letters relative to the movement to various persons and issued appointments as officers, among them an appointment as colonel. The prisoner said that he had not.

Q. (By the GOVERNMENT ATTORNEY). Do you not remember that you attended a number of meetings on a sugar estate at which these matters were discussed?—A. I do not remember. I had nothing to do with the movement; I have kept entirely aloof from it.

Q. Were you in New York in the year 1893?—A. I have not been there since 1878.

Q. Have you no relations there with persons who have been concerned in these matters?—A. I have, it is true, some friends to whom I was in the habit of writing.

Q. Have those letters anything to do with the movement?—A. Nothing whatever.

The prisoner was then asked whether he recognized some fragments of a letter which was on file as being in his handwriting. After carefully examining them, he said that he did not.

Q. Is the handwriting like yours?—A. I think it is different.

Q. Do you know the writing?—A. (Again examining it carefully.) I do not know it.

Q. Do you recognize that letter on file among the records of this court as having been written by you [referring to a letter addressed by the prisoner to Dr. Betancourt]?—A. (Examining it with care.) The writing looks like mine, but I do not dare to state positively that it is, for various reasons which I can not state now. It looks like my handwriting, but I do not feel certain that it is.

THE PRESIDING JUDGE. Do you know Don José Inocencio Azcuy?—A. No.

Q. Have you never had any relations with him?—A. No.

Q. Have you never addressed a letter to him?—A. I have not.

The prisoner's counsel stated that he did not desire to address any questions to Mr. Sanguily, and the latter took his seat on the prisoner's bench.

#### THE EXPERTS.

No one but Mr. Biosca appeared for the prosecution. Mr. Biosca compared the signatures of the three letters of the prisoner which were in the possession of the court; he considered them similar, and thought they had been written by the same hand, although he could not positively state that they had.

Messrs. Antonio Pérez Madueño and Pedro Simon Alvarez, the experts for the defense, claimed that the fragments of the letter in the possession of the court, which the Government attorney thought to have been written by Mr. Sanguily, were of no importance whatever, for the reason that the document was wholly illegible.

The Government attorney questioned them on each particular word in the fragment of a letter which apparently contained the appointment of Mr. Azcuy as an insurgent colonel. The following words were found: Colonel in the army \* \* \* citizen \* \* \* fully author \* \* \* colonel of our \* \* \* you are an \* \* \* appointm \* \* \* cios \* \* \* organize forces \* \* \* which is hoped by yours truly \* \* \* Julio Sanguily (flourish).

The experts insisted that it was quite impossible for them to make any sense of the detached words of the document, and after several questions by the prisoner's counsel, they withdrew.

DON ANTONIO LOPEZ COLOMA.

In reply to the usual preliminary questions, he stated that he was 25 years of age, married, an ex-railroad employee, and that he was connected with the prisoner neither by blood relationship nor by friendship.

He said that he was arrested in the month of March last for having placed himself at the head of an insurgent band at Ibarra on the 21th of February. He declared that he had not instigated that movement, and said that he took the place at the head of his men under compulsion, designing to act as an autonomist, and not as a secessionist.

Q. (By the GOVERNMENT ATTORNEY.) Had you previously visited Habana for the purpose of proposing to Sanguiely to assist you?

WITNESS. I had not.

Q. Did you bring oral or written instructions from Dr. Betancourt, which you were to communicate to Juan Gualberto Gómez?—A. I came to receive orders from Sanguiely, Aguirre, and Gómez, but I only saw Gómez, and he merely gave me a letter.

Q. Did you speak to Gómez concerning the uprising?—A. No, sir.

Q. Or with Sanguiely?—A. Nor with Sanguiely, either.

At the request of the Government attorney, the clerk of the court read the statement made by the witness at San Severino castle at Matanzas. In that statement Coloma said that Don Pedro Betancourt had commissioned him to call upon Sanguiely, Juan Gualberto Gómez, and Aguirre at Habana, with a view to raising the cry of "Hurrah for reform!" The witness was then asked how many interviews he had said at San Severino that he had had with Sanguiely and Aguirre. He answered that he had there stated that he had had none, although he was acquainted with those gentlemen.

Q. How was it that you did not speak to Sanguiely and Aguirre?—A. Because it was believed at Matanzas that Messrs. Sanguiely and Aguirre were opposed to the movement. I consequently saw no one but Juan Gualberto Gómez.

Q. (By PRISONER'S COUNSEL.) Whom did you recognize as leader?—A. Betancourt.

Q. (By the GOVERNMENT ATTORNEY.) Had you no knowledge that Sanguiely was the leader of the movement in Habana?—A. On the contrary, I had heard that Sanguiely disapproved the movement, and as Betancourt wished to make me believe that Sanguiely was with the movement, he spoke to me in rather vague terms.

Q. Did Betancourt tell you that Sanguiely would place himself at the head of the Matanzas forces?—A. He had told me that he expected Sanguiely by the 25th.

Q. (By the PRISONER'S COUNSEL.) Did you believe those statements of Betancourt?—A. I did not think that Sanguiely would join the insurrection.

Q. If Sanguiely had gone to join the insurrection, on what day was he to do so?—A. On the 21st.

After a document belonging to the records of the court had been shown to the witness, and after he had ratified all the statements which he had made, he retired.

## A FEMALE WITNESS.

The next witness was a colored woman employed on the estate Portela, in Aguacate, where the prisoner Sanguiely used to go on hunting trips.

PRESIDING JUDGE. Do you swear, before God, that you will tell the truth?

The witness did not answer, although the question was repeated.

The JUDGE. Do you not hear?

WITNESS (terribly frightened). Sir!

She was unable to answer the usual preliminary questions that were addressed to her, and afterwards answered in monosyllables. It was finally elicited that she was an unmarried woman, employed in agricultural labor.

Q. (By the PRESIDING JUDGE.) Did you reside on the estate Portella, in Aguacate, at the close of last year?—A. Yes, sir.

Q. (By the GOVERNMENT ATTORNEY.) Did not Mr. Sanguiely occupy a room there, the furniture of which was sold?—A. Yes, sir.

Q. Was there a gun there?—A. Yes, sir.

Q. Do you remember whether the civil guard came there because the furniture was to be sold?—A. Yes, sir.

Q. Was there a closet in that room?—A. Yes, sir.

Q. Who kept the things there?—A. I don't know.

Q. Did you see when the civil guard took some papers?—A. No, sir.

Q. (By the PRESIDING JUDGE.) Do you remember what person spoke to Don Julio Sanguiely?—A. I do not remember.

Q. (COUNSEL FOR THE DEFENSE.) When the civil guard came to examine the closet, where were you?—A. At home.

Q. Did you live in the house occupied by the family?—A. No, sir.

Q. And did the civil guard apply to you?—A. Yes, sir.

- Q. And did those gentlemen come to see the furniture?—A. Yes, sir.  
 Q. Did they buy anything?—A. Yes, sir.  
 Q. Did the commander of the civil guard come there?—A. No, sir.  
 Q. Did they take leave of you?—A. No, sir.  
 Q. Did you not see what they took away?—A. I did not notice.  
 The witness then retired.

## INSPECTOR TRUJILLO.

After answering the usual preliminary questions, he said that he was acquainted with Sanguily, but that he was neither his friend nor his enemy.

Being questioned with respect to the arrest of Mr. Azcuy, he said that when he arrested him on his landing from a steamer from Key West, he untied his cravat, in which he found a paper, which Azcuy snatched out of his hand, put it in his mouth, and chewed it up, so that he was able to secure a part of it with the greatest difficulty, and to take another fragment out of Azcuy's mouth.

The fragments of the letter having been shown to him, he said that they appeared to be the same, and withdrew.

## DON JOSÉ PAGLIERY.

Mr. Pagliery appeared in court in citizen's clothes, and answered the usual preliminary questions by saying that he was 45 years of age, and a colonel in the civil guard.

The PRESIDING JUDGE. Do you know Mr. Julio Sanguily?—A. I do.

Q. Are you a friend of his?—A. No; but I have had some intercourse with him.

In reply to a question by the Government attorney, he said that Azcuy had never told him who had given him the papers which he carried in his cravat, or who had signed them.

His first statement was read, from which it appeared that he had taken from Azcuy a folded letter which was hidden in his cravat, and that when Azcuy saw that the letter was discovered he tore it in two pieces, which he put into his mouth, but that the witness had succeeded in securing some fragments of chewed paper which, among other things, said: "Habana \* \* \* Mr. José Azcuy \* \* \* by our author \* \* \* to organize forces." It bore Sanguily's signature, and when Azcuy was asked who had given him that paper, he said that it had been given him by his nephew, Dionisio Azcuy.

The JUDGE. Were you chief of police on the 24th of February?—A. Yes, sir.

Q. Were you the person who arrested Don Julio Sanguily?—A. Yes; by order of the Governor-General.

Q. Had you any knowledge that he was conspiring with Betancourt and López Coloma at Matanzas?—A. I know, in a general way, that an effort was being made in behalf of secession; everybody knew that.

Q. Did you know that Sanguily was going to place himself at the head of a band from Matanzas, Ibarra, or any other place?—A. I did not know anything about it; I only knew that there was a conspiracy on foot.

Q. (By the PRISONER'S COUNSEL.) Do you remember that on the 28th day of June last, you sent a communication to the court, telling what you knew with regard to Sanguily's antecedents, and said: "A record of all this must be in the Captain-General's office, since the Captain-General was informed of the facts; I have no information except common reports which I am unable to prove"?

The witness answered in the affirmative, and withdrew.

## DON JOSÉ INOCENCIO AZCUY.

This gentleman was unable to appear in court, being ill in a hospital. It was at first decided to visit him at the hospital, but finally, the counsel for the defense and the Government attorney agreeing, it was concluded to do without his testimony; instead of which his first statement was read, from which it appeared that Mr. Azcuy was 56 years of age, married, and an owner of country real estate.

Being asked as to the appointment of a colonel which was taken from him by Inspector Trujillo (said paper being concealed in his cravat) and whether the injury done to the paper was done by him, he said that on his landing in this port Inspector Trujillo took the paper in question from him; he (witness) was able to keep a part of the paper. As to the purport of the document, he said that as he was the lessee of the estate Rosario at Linares the appointment of an insurgent colonel, signed by Sanguily, was sent to him, but he did not know whether the signature was genuine or not, as it was sent to him by the revolutionary junta of New York on the 31st of December, 1894, and was delivered to him by Dionisio Azcuy, his nephew. He conferred, he said, at Tampa with Mr. Enrique Collazo and entered that whirlpool of secession for the sole purpose of being able to see his son, but that he never could be an insurgent, and that Enrique Collazo confirmed to him the appointment of a colonel.

This declaration was read after those from which we give extracts below; we have, however, preferred to place it here, because it is in the order in which the witnesses were called.

DON RAMÓN SANCHEZ.

Mr. Sanchez answered the usual preliminary questions by stating, among other things, that he was the proprietor of the pawnbroker's shop known as Luz, on the corner of Compostela street. He said that he was a friend of Sanguly.

The PRESIDING JUDGE. Did Mr. Sanguly pawn a revolver and a machete in your establishment?—A. I have a kind of an idea that he did, but I can not be positive about it, nor do I remember the date.

Q. About how long ago was it?—About a year, a year and a half, or two years. Sanguly has done business with me at various times.

Q. When the preliminary examination was held, did you remember when Sanguly pawned those articles?—A. Yes, I did remember then, because the date was not so remote.

Q. (The GOVERNMENT ATTORNEY.) Did you say in your statement that the last transaction had taken place eight months previously, and that Sanguly had pawned a machete and a revolver? Do you remember whether such was the fact?—A. Yes; I do remember it now.

Q. So that in December—that is to say, eight months before your declaration—Sanguly pawned a machete and a revolver at your shop?—A. He did.

Q. Do you remember that you said, in the month of October, that Sanguly had pawned those articles?—A. Yes, sir.

The PRISONER'S COUNSEL. You probably remember the day when the insurrectionary movement began. Do you remember whether Sanguly had redeemed the machete and the revolver at that time?—A. I can not say positively.

Q. But do you not remember that you sold those articles at public auction?—A. Yes.

COUNSEL. Then it is perfectly evident that he did not redeem them.

The witness then retired.

In reply to a question by the presiding judge, Sanguly stated that he did not remember the precise date when he pawned the machete and the revolver, although he knew that he did not redeem them.

Don Francisco Regueira, one of those concerned in the uprising at Ibarra, was next summoned to appear as a witness. He did not appear, and it was decided to do without his testimony.

DON LUIS LORET Y MOLA.

This gentleman is a native of Puerto Principe, 21 years of age, unmarried, and a student. He was tried for having taken part in the present uprising, and was pardoned.

COUNSEL FOR THE DEFENSE. Do you know whether, at the time of the uprising of February 24, Sanguly was in any way concerned in it at Ibarra?—A. I know nothing about it.

Q. Who was your leader?—A. Nobody, except one who was at our head, and that was Coloma.

Q. How many of you were there?—A. Fourteen.

Q. Do you not know whether Sanguly was to take command of the party?—A. I know nothing at all about it.

Don Paulino Alfonso was then summoned, but did not appear.

DON GERARDO PORTELA.

This gentleman is a native of Habana, 33 years of age, a lawyer, and was tried, together with Sanguly, in the case of Fernández de Castro.

In reply to a question of the defense, he said that he was tried for kidnaping Fernández de Castro, together with Sanguly.

COUNSEL FOR THE DEFENSE. Were you tried on the same charges, or on different ones?—A. On the same charges.

Q. For the very same reasons?—A. The very same.

Q. Who tried you?—A. The military authorities. There were many persons tried in that case.

Q. Were you released?—A. Yes, sir.

The witness then withdrew. Mr. Azcuy's statement was then read, and this ended the evidence. The Government attorney and the prisoner's counsel were then told that they were at liberty to speak. In our next edition we will give reports of the arguments of both these gentlemen.

[Translation of the arguments of the prosecution and the defense in the trial of Julio Sanguiy, Habana, 1895.]

[From *La Discusion*, Suplemento, December 1, 1895.]

# THE SANGUILY CASE—ORAL PROCEEDINGS.

## SPEECH OF THE PROSECUTOR.

**GENTLEMEN OF THE CHAMBER:** The crime of rebellion charged in this case is certainly one of the gravest of all those defined by our code; so much so that the penalty of imprisonment for life, attached to it by article 238, is inflicted in only very rare instances, among others, on those committing treason by inducing a foreign power to declare war against Spain, if it declares war; on those who surrender a fortress or a vessel of war to the enemy; on a minister who countersigns a decree alienating a portion of the Spanish territory; on anyone committing parricide, and on anyone committing a robbery resulting in murder.

It is natural that this should be the case, for those acts are of the same gravity as that of persuading and inducing a few malcontents, a class that is never wanting in any country, to rise against our mother country in order to tear from her this cherished piece of Spanish earth, to which absolutely no one except Spain has any right, in view of her having discovered, peopled, and civilized it; in view of the treasures which she has spent here to beautify it; in view of the efforts which she has made and is still making to the end that all the rights, liberties, and benefits enjoyed in the peninsula may be enjoyed in this country, and in view of the blood so lavishly shed by her sons to retain it.

Still, those who commit any of the former offenses know the consequences of the crime which they are perpetrating; but those who promote a rebellion like that which is now desolating this land know where their crime begins, but they ignore its scope and its consequences.

Having laid down these views with regard to the gravity of the offense charged, I proceed to discuss, with entire impartiality and without any heat of passion, the evidence existing in documents and that which has been adduced in this case.

I have already stated that the crime charged is that of rebellion, defined and punished by article 238, taken in connection with the first paragraph of article 237, of the Criminal Code.

Now, the public ministry, which I have the undeserved honor to represent on this occasion, charges the prisoner, Don Julio Sanguiy y Garit, with being the author of such crime of rebellion, and bases its accusation upon most solid oral, documentary, expert, and even confessional evidence; such evidence as removes all kind of doubt as to his direct participation in the same in the character of instigator, as required by the said article 238.

In this case, that article applies fully to Don Julio Sanguiy, because it inflicts the same penalty on any person instigating and inducing rebels to maintain rebellion as on those waging it and on the principal chiefs of the rebellion.

Those articles read as follows (he reads them):

I now proceed to show that Don Julio Sanguiy induced the rebels to wage rebellion, and that he was, besides, one of its principal chiefs, and that he acted as such.

Let us examine his declarations in the preliminary proceedings and his confession in this proceeding.

The accused, as is natural, denied all the charges made against him; but nevertheless he confessed that López Coloma came to see him before rising with his party in Ibarra, to induce him to join him in the rising, which he says that he refused to do, and that he endeavored, on the contrary, to dissuade him from it.

Does the court believe that such plans are communicated to persons where there is not absolute certainty that they are initiated into the secret, that they favor the movement, and that they assist it with all their ability?

But this is not all. He confesses besides, in a declaration made by him on the day on which he was arrested, and which he subsequently ratified before the judge of El Cerro, and afterwards in this proceeding, that "in view of his political standing"—let the court note this, these are his very words—"he is certain that if any important project had been concerted he would have known it, and that is not true that any movement was agreed upon for February 24."

He said this on that very 24th February, and the inferences are obvious. His political affiliations were Separatist, and he was in constant relations and intercourse with the principal leaders of that party, because it was only by this means that he could be sure that any important project would have been communicated to him, since that is done only with leaders on whom absolute reliance is placed.

We all know well that such a project existed, that it was serious and very serious, and that its execution began on that very 24th February; this we all know, because we are seeing it, and this poor land and the mother country are seeing it and feeling its effects; and if there is still any doubt of it, ask the army, that martyr to duty, which has already shed so much of its blood.

The prisoner himself, therefore, clearly, though involuntarily, confesses in that declaration his direct participation in the Separatist movement and his character as one of the principal leaders, because only such communicate to each other the preliminary steps which accompany every rebellion, what has been decided with regard to the day of the rising, and the plans agreed upon.

Moreover, all this is corroborated by the declaration of López Coloma, who stated, at the time of his arrest, that he came to Habana a few days before the rising by order of Dr. Betancourt, of Matanzas, to request instructions and orders of Don Julio Sanguily and Don Juan Gualberto Gómez as to whether the cry of independence should be raised or not, and that it was agreed that the said cry should be raised immediately.

It is true that he immediately amended that declaration by saying that he came to an understanding with Betancourt and the latter with Gualberto Gómez, and that what Betancourt told him was to see Gualberto Gómez afterwards, in order to receive his orders and those of Sanguily; but that he expressed himself vaguely on this subject, and that he consequently had no interview with him (Sanguily).

Let it be noticed that this interview, of which López Coloma tries to clear Don Julio Sanguily, is confessed by the latter, who asserts that the former saw him and invited him to join him in the rising.

The court will now, in its discretion, decide which of López Coloma's declarations deserve the most credit and the most belief—the first, made at the time of his arrest, and when he had not yet been tutored, or the subsequent ones, including those in this proceeding, in which he did not and could not explain these contradictions satisfactorily.

That witness adds, moreover, that he knew through Betancourt that Don Julio Sanguily was to place himself at the head of the movement.

And I here spare the court all that I might say concerning the weight of the evidence adduced in the preliminary proceedings when it conflicts with that furnished by the testimony in this proceeding; not only because I am perfectly well aware of the wisdom of all its members, but because I am also aware of the brilliant talents which distinguish the prisoner's counsel, and I am sure that in his argument he will not make use of those commonplaces which the prosecuting attorney employs only in the preliminary proceedings as if the old procedure was still in force; that the amendment of the criminal law and the establishment of oral and public trial in this island has consequently been of no avail to the counsel in this case, etc. No; Don Julio Sanguily's counsel knows perfectly well that the preliminary proceedings, cited by the parties in this case, have their real weight, provided the evidence adduced in them is not overthrown by that produced in this proceeding, and that such rebuttal must be effected by convincing the court that the former evidence was false and that the testimony adduced in this proceeding is true.

The court, then, with the data furnished it, and with the evidence produced by the parties to this case, will form its opinion, and will embody that opinion, in whatever sense it may be, in its decision.

Let us see now what the authorities in existence here at that date tell us as to the prisoner's machinations, before he was arrested on the 24th of February, to make proselytes to his views, and to procure the rising against the mother country for the purpose of achieving the independence of this island.

The civil governor, in his report on page 10, dated February 27, 1895, states "that he proceeded to arrest Sanguily by order of the Governor-General, who knew from private information and from police reports that he was conspiring, and that it was notorious that he was designated to place himself at the head of the movement."

And that this was true is corroborated by the statement of his excellency the Governor-General, folio 22, second page, dated March 21, 1895, in which he uses these words: "With regard to Don Julio Sanguily, it is known to me through confidential information, both from this capital and from abroad, that he was one of the instigators of the Separatist rebellion, and that it was said that he was to place himself at the head of the insurrectional movement in the provinces of Habana, Matanzas, and Santa Clara; that his whole conduct, which was closely watched by the police, also proves this; and that it was certain that he maintained relations and correspondence with the revolutionary junta at New York, with the workmen (laborantes) abroad, and with the Separatist committees of the provinces of the island of Cuba."

It is evident from this that Don Julio Sanguily could well assert that "he was sure that any important plan agreed upon would be known to him."

His excellency the Governor-General adds in this report: "That he likewise knew

the transactions in which Sanguily had participated for the acquisition of munitions of war; but that, as he obtained all this information in confidence, he refrained for the time being from divulging it, intending to do so if it should be necessary to prove the facts, and awaiting the time when his assistance should be requested by the judicial authorities, in order that these facts might appear in full at the trial."

The Government had no proofs of these last facts, perhaps because they were communicated in confidence to His Excellency the Governor-General, and the prosecuting attorney would, at the proper time, have requested the court to ask General Calleja for the assistance which he had offered the judicial authorities in facilitating the proof of them, but that the waiting until he forwarded the documents from the Peninsula, where it is well known that he is, would have too greatly prolonged the preliminary stage of this trial; and besides, because the remaining evidence is so strong that he thought that he could dispense with them without endangering the success of the task which his office imposes upon him.

Besides, the witnesses who testified to this effect are of the highest respectability, and their simple assertions must certainly have weight in the opinion of the court, as they had in that of my office, since falsehood or exaggeration is not even to be suspected in such high and respected personages.

Moreover, these assertions are corroborated by other documents, and, among them, by several letters which have been found and of which I proceed to speak.

I shall begin with those which were found by the civil guard at the Portela works among other papers in a cupboard in a room which was frequently occupied by Don Julio Sanguily, and in which the rifle, admitted by the prisoner to be his, was seized.

The prisoner does not recognize that letter, nor does he know who wrote it nor to whom it was addressed. It is evident that it was not written by him on comparing the writing with that which is known to be the prisoner's; but it does not appear so clear to the prosecuting ministry that it was not addressed to him, as it was found in a room which he frequently occupied and with other articles used by him and belonging to him, and among other papers among which was found no less than a diary of his, as stated by the civil guard in the report on folios 98-101, which the Sala permitted this ministry (the prosecuting attorney) to offer as a part of its documentary evidence.

Let us see now the contents of this letter which appears on folio 94, and which is dated December 8, 1893. (He reads it and we extract the following paragraph from its contents: "No one more than you, in view of your respectable surroundings, the credit which your name imparts to the movement, your old and 'well-established reputation as a revolutionist' and a soldier, the position which you have always occupied among the members of both parties, 'is called' to lead a regular and important movement from the very start.")

Another letter figures among the documents on folio 45. This letter was turned over to the military court which first heard this case; it was signed with the anonym "A Resident," and the prisoner has recognized it as written and signed by him, both in the preliminary proceedings and in this.

This and the signatures written by the prisoner at the foot of his declarations in the preliminary proceedings have served as a means of comparison in the expert examination of other letters seized, and, although its contents are of no importance in themselves, I shall read it in order that its style may be compared with that of those which still remain to be examined, and that it may be seen that it is exactly the same.

"Thursday—Cerro—February 14, 1895."

In this letter we find the following sentence: "I have something of interest to communicate to you on this subject."

Now, compare the heading of this letter with that of the letter which appears at folios 36 and 37, which was, beyond any doubt, written by Don Julio Sanguily, although it is signed "Gener," and it will be seen that it is the same; it is as follows: "Saturday—Cerro—February, 1895." [He reads it.]

In this letter, as the court has heard, the person signing it "Gener" says that he has pawned his revolver and his machete, and the court will remember that the prisoner has admitted having been reduced to such straits, which, moreover, has been proved by the statement of Don Ramón Sánchez, the owner of the pawnbroker's establishment at the corner of Compostela and Luz streets, where the pawning took place.

There is another reason for asserting that this letter was written by the prisoner and not by some other person who imitated his handwriting exactly, and that is, that if anyone had done this in order to implicate the prisoner by means of this letter he would, in that case, have signed it "Sanguily," the name of the person whom he was trying to implicate and whose handwriting he was imitating, and not with a fictitious signature used by the person to whom that handwriting really belongs only

when he is attempting to conceal his identity from those who do not know him, in case the letter should be lost.

Another document, and certainly the most important one, remains to be examined before we proceed to consider what the experts have said about this letter and that document.

This document is an appointment as colonel in the insurgent army, issued by Don Julio Sanguily in this city, who has competent authority, according to the said appointment, in favor of Don José Inocencio Azcuy, to organize forces in Vuelta Abajo, and to issue in his turn such appointments as he may think necessary for the purposes of the rebellion, in favor of such persons as may merit them by their services.

Let us see first of all how this document was found. Azcuy was arrested by the police when he landed here on his arrival from the United States. He was carefully searched, and this appointment was found in the knot of the cravat which he was wearing.

When Azcuy saw it in the possession of the police, he attempted to snatch it from the hands of Inspector Trujillo in order to swallow it, but he only partially succeeded, the fragment which appears at folio 236, and by which an exact knowledge of its contents is obtained, having been saved.

Azcuy himself explained in all his declarations how and when it came into his possession, stating that his nephew, Don Nemesio Azcuy, had given it to him in the "El Rosario" house at Viñales, in January or February of this year, according to the number of months which in his declarations he states as having elapsed, and added that it was signed by Don Julio Sanguily, though he did not see him sign it, and that his nephew told him that it was sent to him by the Revolutionary Junta at New York.

Don Julio Sanguily does not acknowledge the letter signed "Gener" nor this document, though he admits that the handwriting of both resembles his own.

Let us now see the text of this document. It reads as follows:

"Sr. D. J. Azu— Coronel del Ejercito—, Ciudadano, competentemente autor— Coronel de nuestro— sub— y— Queda Vd. actor z— conferir nombrar— todas que por mi merit— cioslos merezca— Organizará, fuerzas que— to le irán a u— instrucciones— sobre la manera ó— ganiz— los y puntos que ha de ocupar— confiamos en su celo— tico espera— zo afirmo., su y P. J. S—anguily."

The little that is wanting does not prevent nor even render difficult the understanding what the document means as clearly as if it was entire, especially in the signature, to which only the "a" in Sanguily is wanting, the rubric (flourish) being seen distinctly.

This document and the letter signed "Gener" having been examined by the experts in handwriting, they could not do less than say at the first preliminary examination that they believed both of them, together with the letter at folio 45 and the signatures affixed to his declarations by Don Julio Sanguily, to have been written by the same hand; and the expert who repeated that examination in this proceeding made the same statement, and it is impossible that it could have been otherwise, as it is sufficient, without being an expert, to have a little practice in this kind of comparisons to perceive this, and the person who now has the honor of speaking has not the slightest doubt on the subject, as he made this comparison, letter by letter, with a good magnifying glass.

I am well aware that my assertion in itself alone is of no importance, and that the opinion of the experts is not conclusive, but the court will doubtless repeat this operation, form its opinion, and then decide.

The experts for the defense were not present at the examination in this proceeding as the defense produced them only that they might ratify the declaration which they made in the preliminary proceeding in which they stated that they could not reproduce the document at folio 236, which statement they repeated when it was exhibited to them at the request of the prosecution.

As the prosecution, therefore, bases its argument upon the certain fact that that letter and that appointment were written and sent by Julio Sanguily, can there be a doubt of his direct participation in the crime of rebellion which is charged in this case?

Both documents are very expressive. The letter says: "He is on the eve of placing himself at the head of a work of redemption," and the prosecution adds that if he did not succeed in doing so on that day it was doubtless because he could not leave his family without giving them some money, which was out of his power; and, above all, because he was arrested before the rising had begun.

Hence, this letter and the statements of López Coloma prove that he induced and decided the rebels, and that he was one of the principal leaders of the rebellion.

And if, in spite of all this, any doubt still remained, it would certainly be dispelled by the appointment as colonel in the insurgent army, seized on Azcuy's person,

and issued by Sanguily, "who has competent authority," since it is very clear that only the principal leaders have such powers.

I have little to say about the evidence produced in this case by the distinguished counsel for the prisoner, as he has not succeeded in disproving by it any of the charges upon which this prosecution is based.

I well know that in the discharge of the honorable professional duty incumbent upon him to defend his client he will distort this evidence, and will by his ability succeed in imparting some life to it, but it will be a fictitious life, which can not withstand a cool and dispassionate examination such as that to which it will be subjected by the court, and to which it has been subjected by this ministry, whose representative on this occasion would have experienced sincere gratification in being convinced by it of the prisoner's innocence in order to desist from the prosecution in this case, as it is always more agreeable and gratifying to find that men are innocent than that they are guilty, especially where great crimes are involved.

This has not been the case, and he has therefore maintained his inferences as conclusive, thereby discharging the very sacred duty imposed by the law of seeing that those who have violated its injunctions shall suffer the penalty of their crimes.

This evidence on the part of the defense was confined to the statements of the persons composing López Coloma's band, who could only say that they did not know that Sanguily was to place himself at their head, and this means nothing more than that, owing to their obscurity, they were not informed of it, as the court may have seen, or that, if they knew it, they now conceal their knowledge, which is not at all extraordinary, as they were all partisans of the same cause, and did not wish to betray their leader.

The prisoner's counsel touches upon one point in his statement of preliminary inferences, in which I think that he is mistaken. After stating those which he considered applicable, and asking for his client's acquittal, he says: "Article 653 of the Law of Prosecutions permits the presentation of alternative inferences, and, if article 678 of the same law allows the parties to reproduce, at the oral trial, the preliminary questions which 'have been rejected,' it can not be disputed that they have a right to offer as alternative inferences any of a preliminary character not presented before that trial."

The defense then states, as an alternative, the inference that, even if the prisoner were guilty, he is relieved from every penalty by General Calleja's proclamation of February 27, granting pardon to all who submit to the authorities within the eight days following its publication.

Let us see what is said in articles 653 and 678 of the Law of Criminal Procedure, upon which the defense lies. [He reads them.]

The right of the parties, therefore, to state alternative inferences on each of the points which are to be the subjects of the decision, in order that they may be taken into consideration in the sentence, is indisputable; but, in my opinion, the same is not the case with the preliminary questions, because, in order that they may be reproduced, article 688 requires that those questions shall have been "previously" raised, and that they shall have been rejected by the sala.

How, then, can that which has not been "produced," and which, consequently, could not be rejected, be reproduced?

But, be that as it may, let us grant that such question is applicable and fitting, and let us examine it thoroughly.

The proclamation cited was dated February 27, and Señor Sanguily was arrested and prosecuted on this charge three days before, to wit, on the 24th.

Can a pardon, then, which had not yet been granted when he was arrested, apply to him?

Let us see its contents. [Reads it.]

As the court may see, article 3 grants full pardon to the rebels, it is true, but only to those who shall submit to the authorities within the term of eight days subsequent to the grant; and, as the prisoner did not fulfill the condition, the benefit of it does not and can not apply to him.

The defense will reply to this that a person who was not at liberty could not submit. If he had been at liberty and if he had rebelled, would he have presented himself within that term? I can not answer that question, for in order to do so it would be necessary to penetrate into the sanctuary of the conscience, and Heaven preserve me from even attempting it. But this I will say, that the object of that pardon was precisely to reach that interior sanctuary in order to learn who had repented of the previous acts which they had committed.

I am now going to try to show, in anticipation of certain arguments of the defense, that the preliminary inferences stated are the only ones possible; but as I must not read the whole code for that purpose I shall confine myself to disproving the applicability to this case of article 241, which treats of prevention and attempt.

Article 244 says [reads it]:

Now, it is essential to the existence of a conspiracy or attempt, and to their being

so designated, that the offense shall not have been consummated, for if it is consummated, it is evident that the penalty to be applied is that which is attached to the offense committed; consequently this article is not applicable to the case, as the rebellion was not only instigated, but is still raging in this island.

Can it, then, be thought, asked the prosecutor, that, because Don Julio Sanguiely was arrested on the 24th February and, therefore, could not in person support the rebellion begun on that day, his acts did not pass from the stage and consequently remain in that of attempt or prevention?

This view is also refuted by the clear language of article 238. It says [he reads it]: As we see, it requires that the rebels be induced and decided, using a copulative conjunction, and to instigate rebellion; but it does not require that those instigating it shall afterwards support it, because the conjunction used here is disjunctive, "or;" hence, the one who instigates it, although he may not subsequently support it, as in the case of Don Julio Sanguiely, has done all that is required by article 238.

And this, apart from his being one of the principal leaders of the rebellion, in which character its penal provisions also apply to him.

In order to conclude, gentlemen of the sala, let us sum up the charge set forth by this ministry in this ill-arranged statement.

The most prominent are—

The prisoner's expressive statement that, "in view of his political standing he is sure that if any important plan had been agreed upon, he would have known it;" by which he plainly confesses that he was one of the principal leaders of the insurrection, as they alone know these plans in advance.

Coloma's declaration, in which he says that he came to Habana to receive his instructions as to whether the cry of independence should be raised or not, and his statement that he knew through Betancourt that Sanguiely was to place himself at the head of the insurrectionary movement.

The reports of the Governor-General of this island and the civil governor of the province, stating that Sanguiely was one of the instigators of the insurrection; that he was to place himself at the head of it in this city and in the cities of Matanzas and Santa Clara; that he maintained relations and correspondence with the revolutionary junta at New York and with the Separatist committees of this island, and that he had participated in the acquisition of munitions of war.

The letter appearing at folio 91, found at the Portella works, among other papers of Don Julio Sanguiely, in which nothing but the revolution is spoken of.

The letter at folio 36, signed "Gener," and directed to Dr. Betancourt, which is undoubtedly entirely in Sanguiely's handwriting and in which, as in the preceding, nothing is spoken of but the then rising, and which was written thirteen days before it began, to wit, on the 9th of February last.

And, lastly, the appointment as colonel in the insurgent army issued by Sanguiely in favor of Azcuy, with competent authority, which in itself alone proves superabundantly that Sanguiely was one of the chiefs and organizers of this armed rebellion, because he could not otherwise have issued these appointments.

On these grounds the prosecutor asks the sala, after weighing the evidence produced, with the good judgment and conscientiousness of which it daily gives so many proofs, to be pleased to sentence the prisoner, Don Julio Sanguiely y Garit, as guilty of the crime of rebellion, treated of by article 238, taken in connection with No. 1 of article 287 of our code, without the presence of extenuating circumstances, to the penalty of imprisonment for life, which he asked in his preliminary inferences, and which he has maintained as final, together with the "accesorias" recited in that article, and the costs.

I have finished my prosecution, gentlemen of the sala. The prosecuting ministry aims in all cases at displaying impartiality in its arguments. In that which I am now closing I have taken special care to exclude every atom of passion in the examination of the evidence produced, remembering that if we, the ordinary courts, have cognizance of this case instead of the military courts it is owing to the agreement between the United States and our nation, by virtue of which the civil courts are to try American citizens for these offenses, provided that, as in the present case, the rebels were not caught with arms in their hands. If, then, the most absolute truthfulness and impartiality are always obligatory in the discharge of our duties, they are still more obligatory in this case, when we are trying a foreign citizen, the subject of a friendly nation.

I do not know whether I have well discharged that duty and the others imposed upon me by my office in this trial; but, if I have not succeeded, the court and all others may be assured that it has been owing to my deficiency in ability, to my small command of language, or to some other similar cause, but not to want of good will; nor because I have neglected the means of attaining that end. I have spoken.

#### THE DEFENSE.

YOUR EXCELLENCY: As your excellency has heard from the lips of the prosecutor, the circle in which this case is developed is very limited; the imputation of a crime—

according to the legal classification—nothing extraordinary, certainly; common, frequent in every latitude of the globe, against a prisoner who is innocent of it, according to the documents in the case and the result of this trial.

Still, the public sentiment has decided to ascribe to this case an importance which, in reality, it does not possess; and this is owing to the fact that public opinion presumes without reason that the political agitation which prevails in the environs may, by crossing the threshold of this august place, exercise some influence upon the serene minds of judges who are great precisely because they are the servants of the law, which convicts without malice, and which acquits without sympathy.

I would be the first to wish that the just and clear case of my client had been represented here, and especially that the erroneous arguments of the prosecuting ministry had been refuted here, through the honored agency of one of our forensic luminaries.

It could not be. But really, the task presents so few difficulties that a man of ordinary ability can execute it without effort, and without any fear that the counsel himself may be the cause of his client's conviction, which alone could make it possible for a sentence of condemnation to be rendered in this case consistently with justice.

I, therefore, setting forth, though it may be awkwardly, the evidence in the case, submitting it none the less to the impartial consideration of the court, to its wisdom and its penetration, excluding what is false, proving ad nauseam its nonexistence, reconstructing the legal truth as it appears from the facts in the case, without adding or diminishing anything, trust that I shall prevent the court from deciding that the facts constituting my client's guilt have been proved.

These facts do not exist. How could the prosecuting ministry discover them? Its argument resembles a novel, and the denouement with which it winds up, the terrible penalty which it asks, is inexplicable, in view of the actual state of the case, to such a degree that it can assume form and body only by regarding it as a work of the imagination, elaborated on the forbidden ground of the improbable.

I again assert before the court, anticipating the demonstration of the fact, that the punishable act does not exist in this case; or, at least, there are two standards for the same case—always one of condemnation for my client, always one of acquittal for others who have been in a similar situation to his.

When partially recovering from the astonishment into which I was thrown by the fact that the prosecuting attorney had not in this proceeding modified his exaggerated charge in the sense of acquittal, I rack my brains for the cause; I find no other reason, nor can there be any other, than the moral pressure involuntarily exercised upon the mind by the purest and most elevated ideas, from which it is impossible to withdraw ourselves under certain circumstances, but under the influence of which points of view are admitted as true and real which are in reality optical delusions of the mind, which, deceived by this means, rises from deduction to deduction, until it culminates in the most radical of errors.

A most noble sentiment, the summary or synopsis of all the virtues, prevails, it is true, like a generating principle in the argument of the prosecution, and I do not hesitate to render it that tribute of justice; but the excellencies of patriotism, on occasions like the present, place bandages over the eyes, which conceal the path of legal truth.

Passion, which is a bad counselor, especially in judicial proceedings, is, in its turn, in political trials, necessarily aroused by preconceived ideas; and when these are diametrically opposed to those attributed to the prisoner, the latter, at the time of his defense, has before him, owing to hypotheses based on presumptions admitted *a priori* as evidence, a double prosecutor—the prosecuting attorney, who, if he is humane, speaks impersonally in the name of the law, and the antagonist, who, in the prosecution, yields unconsciously to the pressure of his private feelings.

Thus, in the present case, where the prisoner took a prominent part in the last war, and where he is denounced by the governor-general himself in a long communication, going into minute details, both factors uniting in the, of course, patriotic mind of the prosecuting attorney—the prisoner's antecedents and the Government's denunciation—the conviction of the prisoner's present guilt arises spontaneously in his mind, and he demands the enormous penalty which is its logical consequence.

The theory upon which the defense relies is entirely different, and, consequently, the mode of procedure which it has to employ in this trial is entirely different. To the great syntheses of the prosecuting ministry it will oppose the most scrupulous analysis, and it will sustain its words by proofs, by documents, not taken into account by the prosecuting attorney, although they are entirely conclusive in the prisoner's favor.

Your excellency will now see at once that I am entirely in the right; that the prosecuting attorney is entirely in the wrong; that there is no evidence proving the prisoner's guilt, and your excellency will see how, in logical and legal order, in spite of the frivolous sophistries of the prosecution, the defense stands firm, gaining from the

conscience of the court, by its irrefutable arguments, the unanimously favorable decision which it demands in the name of justice, without servility or adulation, in the name of justice alone.

It is not for me to undervalue any argument, favorable or adverse, as all must be submitted to your excellency's high jurisdiction, and, to be brief—as I must begin with the beginning—I begin by asserting, under the legal rule, that where there is no one accused there can be no oral trial; that this case could not be brought to trial because legally there is no one accused in it, or, what amounts to the same thing, the writ of prosecution is absolutely void, and not even the consent of the prisoner himself can give it force, as its nullity does not affect his personal interests alone, but involves a much higher principle, the public interest or international law.

This is my first proposition, and I proceed to demonstrate it.

Here is the writ of prosecution and arrest.

#### WRIT OF PROSECUTION.

The present case, transmitted by the judge, dean of the judges in this case, having been received, let the receipt of it be acknowledged, and in view of the reasons given in the opinion of his excellency the auditor of the war, at folio 55, second page, the cognizance of the same is accepted, so far as relates to the American citizens, and to that end let these proceedings be entered in the proper book, and let their institution be communicated to the criminal court and to his excellency His Majesty's prosecuting attorney.

It appearing that on the morning of February 24 last, in consequence of "antecedents and confidential communications, the Government proceeded to the arrest of various persons" gravely involved in a projected separatist movement, a band outside of this province having risen in open rebellion on the morning of the said day, under the cry of independence, which case is now under the cognizance of the jurisdiction of war, which has transmitted the previous testimony, in order that the ordinary courts may take cognizance of the said crime so far as relates to the American citizens.

Considering that these acts are invested with the character of the crime of rebellion defined in article 237 of the Criminal Code, and "that the antecedents and other evidence appearing in the proceedings transmitted by the said jurisdiction of war appear to furnish reasonable presumptions of guilt against Don Julio Sanguil y Garit and Don José Maria Aguirre y Valdés as guilty of the said crime in the character of principals."

In view of articles 384 and 503 of the Law of Criminal Procedure, his excellency said that he ought to decree and decrees the prosecution of the said Don Julio Sanguil y Garit and Don José Maria Aguirre y Valdés, and orders proceedings to be instituted in accordance with the charges. In view of their prosecution and of the penalty attached by the law to the crime in question, the provisional arrest of the said Don Julio Sanguil y Garit and Don José Maria Aguirre y Valdés is decreed; let them be notified thereof, and let the proper orders be issued to the heads of the penal institutions in which they are; and if this fact does not appear from the judicial proceedings, let a respectful communication be addressed to his excellency the Captain-General requesting him to be pleased to say so and to issue the necessary orders that the said accused persons may remain as prisoners at the disposal of this court and for the purposes of this preliminary proceeding; let the accused be notified of the right granted them by law to demand the return of this writ within the legal term, and to appoint at once lawyers and attorneys to advise and represent them in this case, and let the clerk of the court report on the subject at the proper time. Let them be required to give bail, within one term, in the sum of 50,000 pesetas (\$10,000) each, in order to secure the payment of any sums of money which they may be required to pay at the proper time, and if they fail to furnish the said bail proceed to attach their property in legal form. Let the penal and prison antecedents be annexed to the case, and, when done, let report be made, in order that such further decrease as may be necessary may be issued.

The examining judge (juez de instruccion) of the district of El Cerro has ordered the foregoing, and signs it. Witness, Eugenio Luzarreta, Antonio Alvarez Insua.

That is to say, these proceedings brought by the jurisdiction of war, in this special case, can have no more weight than that of a mere information, and proceedings are not instituted, nor is arrest ordered, on an information.

The only "considering" of the writ which I am discussing states "that the antecedents and other evidence appearing in the proceedings transmitted by the said jurisdiction of war appear to furnish reasonable presumptions of guilt against Don Julio Sanguil y Garit and Don José Maria Aguirre y Valdés;" that he, therefore, ought to decree and decreed their prosecution.

And a few lines afterwards: "In view of his prosecution and of the penalty attached by the law to the crime in question, the provisional arrest of the said Don Julio Sanguil is decreed."

The civil judge, in whose favor the jurisdiction of war withdraws, issues the foregoing writ as soon as he has received the evidence, before making any declaration of his jurisdiction. Sanguiy is therefore prosecuted and imprisoned for the reasons contained in the evidence transmitted; or, what is the same thing, the civil judge places his signature at the foot of the work done by the jurisdiction of war, from which it follows that Sanguiy is to-day prosecuted and imprisoned by the tribunal of war through the intervention of his legitimate judge, if the latter admits as the only charge against the prisoner that made by the incompetent jurisdiction, something hybrid and confused, which international law does not accept, which it condemns.

In the first place, the protocol of January, 1877, by which Ministers Calderón y Collantes and Caleb Cushing interpret the treaties existing between Spain and the United States, provides in the most positive manner that American citizens shall not under any circumstances be tried by military courts, with the single exception of their being caught with arms in their hands.

And in the second place, the United States consul-general, in a series of communications addressed to his excellency the Governor-General, demanding the enjoining of the military authorities, one of which communications appears as evidence in this case, repeatedly makes the following protest:

"By order of my Government I enter before the Government of this island the most solemn protest against all the proceedings hitherto instituted, or which may be hereafter instituted, by the tribunal of war, on the ground that they are in open violation of the agreement between the two nations."

International conflicts are excited or created in this way. The case of Waller, between the United States and France, occurs at this very time. The United States, believing, from information received from a relative of the American citizen, that an irregular procedure had been adopted toward him, demanded of France a full copy of the proceedings in the case, which is now in the possession of the American Government.

And this, although it is not a question, as in this case, of writs issued by the civil authorities, based exclusively on evidence transmitted from the jurisdiction of war, but, according to all the documents published, on niceties of procedure which the competent tribunal failed to observe.

Now, the prosecution and imprisonment of my client is based entirely and exclusively upon these proceedings which the consul denounces and protests against, not of his own motion, but by express order of his Government; and our own Government has not repelled it.

Are such prosecution and imprisonment legal? No; the former is void, and the latter is arbitrary.

And is it not proved, by legal arguments, that this case should not have been brought to oral trial, there being no accused, as the writ of prosecution is void under every aspect?

At the proper time I requested, and the court granted, that both the writ of prosecution and imprisonment and the consular protest should be admitted as part of my client's evidence.

Before leaving this head, I must add two considerations, one of which I have already alluded to, to wit, that it makes no difference that the accused did not enter an appeal against that writ of prosecution, because, where an essential point forming an intrinsic part of an international convention is involved, the will of an individual does not affect the provisions of such convention; and the other consideration has reference to the fact that Sanguiy's prosecution and imprisonment were ratified several days afterwards, not for reasons arising subsequently, but "because the grounds for ordering it not having changed, it is proper to carry out the provisions of article 516 of the law of criminal procedure."

#### THE PUNISHABLE ACT.

In commenting upon it the prosecuting attorney makes four assertions, all of them, without one exception, absolutely untrue.

1. Sanguiy, he says, was, up to the day of his arrest, one of the most active promoters and instigators of the insurrection which broke out in this island on that day.

2. Being the person designated to place himself at the head of the insurrectionary movement in this province, that of Matanzas, and that of Santa Clara.

3. And as principal chief and leader of that insurrection, and as the representative of the revolutionary junta existing in New York, he issued—

4. The appointments conducive to his purposes, among them that of Don José Inocencio Azcuy as colonel in the insurgent army.

On examining the proceedings, it is proved that three of these assertions, far from being original, were gathered from a vitiated source. Their want of authenticity is evident from the very first.

I shall discuss the fourth separately.

Let us study the first three. They are a literal copy of the declaration made by his excellency General Calleja in the proceedings instituted by the military jurisdiction. In proof of this see General Calleja's declaration.

Don Emilio Calleja é Isasi, lieutenant-general in the army, governor and Captain-General of the Island of Cuba, etc., certify, in reply to the preceding interrogatory: (1) That my name is as above stated; that I am of full age; and that I have no direct nor indirect interests in this case. (2) That I affirm and ratify the communication referred to in the question relating to my authority. (3) That as to Don Julio Sanguilý and Don José María Aguirre, it is known to me, through confidential communications, both from this capital and from abroad, that they were promoters of the separatist rebellion, and that it was said that they were to place themselves at the head of the insurrectionary movement in the provinces of Habana, Matanzas, and Santa Clara. That their whole conduct, which was closely watched by the police, also proved this; and that it was certain that they maintained relations and correspondence with the Revolutionary Junta at New York, with the workmen abroad, and with the Separatist committees of the provinces of the Island of Cuba. Lastly, that by the same confidential channel he has received more evidence concerning their operations, and particularly concerning the participation of those gentlemen in the acquisition of munitions of war, but that, as they are invested with the said character of confidential communications, he abstains, for the present, from repeating them, reserving to himself the right to do so if it should be necessary to furnish proofs, at the time when the administration of justice shall call upon him for such aid in a special case, and in order to have these facts appear in the proceedings. As to Don Ramón Pérez Trujillo and Don Francisco Gómez de la Maza, the same confidential communications have shown that they participated in the Separatist conspiracy, that they were present at secret assemblies, and that they maintained relations with the former agitators, to whose operations, as I was informed by the confidential communications, they rendered direct or indirect assistance. That he has nothing more to say. (Habana, March 25, 1895. Emilio Calleja. Rubric.)

This alone would render the testimony inadmissible, as all that I said when analyzing the writ of prosecution and arrest applies to this case. The declaration is based upon the military testimony, and, not being ratified before a competent judge, disappears with the whole weight of that testimony.

But there is more and more important. General Calleja states that he obtained the information which he gives concerning Sanguilý through confidential communications from the police.

And the police, through its chief, Señor Paglieri, tells the court that, as regards Sanguilý, "it has no other evidence than public report, which it can not prove."

Lastly, General Calleja adds that he knows what he testifies, and he offers to furnish new proofs, and for this purpose the court transmits to the Government a statement of the case, which is answered by the present Captain-General of the island in the following words: "That, as regards the evidence corroborating the statements of General Calleja concerning Don Julio Sanguilý as a promoter of the Separatist rebellion in this island, and as being in constant relations with the Revolutionary Junta at New York, he has the honor to inform the court that there is no evidence at this center corroborative of the said statements, but that as they relate to politics, the said General Calleja may have obtained his information in his character as Governor-General, at which center the documents requested may perhaps be found."

"The General Government, when called upon, stated that as regards the evidence relating to Don Julio Sanguilý, as involved in the present insurrection, it has to inform the secretary, by order of his excellency the Governor-General, that the documents requested are not at this center."

General Calleja's famous statement is reduced to this: The Captain-General and Governor-General, his excellency Señor Martínez Campos himself, condemns his statements.

I make no comparisons, but if General Calleja, Don Julio Sanguilý's personal enemy, is great owing to the office which he filled, Gen. Martínez Campos, who now occupies that same position, has in his favor, in addition to the admiration of his followers, the esteem and respect of his adversaries; and, if he is a national glory, he is, likewise, a European and a universal celebrity, an indisputable man of honor; and he who is all this, he, and not the impassioned and petty defense, is the one who roundly and categorically denies General Calleja's statements.

On this account, it appeared useless to Sanguilý's defense to object to General Calleja as the prisoner's personal enemy, a fact very easily proven. It preferred to oppose to his unsupported charges the full and complete denial of Gen. Martínez Campos.

The prosecuting attorney, on the contrary, gives credit to General Calleja's words, which he copies literally in his inferences in setting forth my client's punishable act. On the other hand, he pays no attention to the documents which I have had the

honor to read to the court, and which strip General Calleja's declaration of all claim to legal truthfulness.

Fourth assertion of the prosecution:

That Sanguiy, in the double capacity of leader and representative, issued appointments in the insurrectionary army; among them, that of colonel, in favor of Azeny.

As it has been shown that there is not in this case any element proving the characters attributed to Sanguiy, the appointment in question was a private act of the prisoner. It would not constitute a punishable act. The contrary would be the case if Sanguiy had been the leader, the representative, authorized to issue such appointments.

And it is certain that this paper, which has been baptized with the name of "colonel's title or commission," is the only one that appears in the case, no allusion being made to any other. It is, therefore, strange that the prosecuting attorney should use the plural in speaking of it.

But this is of little importance. It would be more important to ascertain how the prosecuting attorney knew that this unintelligible paper constitutes a colonel's appointment, issued by Sanguiy.

Azeny asserts that it was given to him by his nephew, Don Nemesio, who had received it from the revolutionary junta at New York. But he does not say that it was issued by Sanguiy; and the fact that he came from New York, and that Sanguiy resided in Habana, makes us immediately presume the reverse.

The experts who were summoned to reproduce the greatly injured text of the paper declare "that they can form no opinion as to the date at which the document was written, nor as to the contents of the writing, owing to the dilapidated condition of the fragments and the want of the necessary words to form even an approximate idea of the context of the writing itself."

How, then, does the prosecuting attorney know that this paper contains a colonel's commission? Why does he suppose so? A mere private supposition, in opposition to the opinion of experts, is not sufficient evidence to prove a fact, to base upon it the presumption of guilt, and to demand the infliction of the penalty which he asks for my client.

Sanguiy denies that the paper in question is his, and Azeny does not assert it; and, to strengthen the case, the handwriting has not been recognized. It is not known whose the paper denominated by the prosecuting attorney "colonel's commission" legally is; it has not been recognized, and this is shown by the following considerations: Article 466 of the Code of Criminal Procedure provides that the appointment of experts "shall be communicated to the accused without fail and immediately;" and article 7 of the treaty of October 27, 1795, between Spain and the United States, ratified by that of February 22, 1819, which went into force in 1821, and both explained by the protocol of January 12, 1877, provides that United States citizens shall be allowed free access to the proceedings in all cases, and shall be permitted "to be present at every examination that is held."

The examining judge was not, could not be, ignorant of the provision of the law of criminal procedure, although he ignored the article of the treaty; and this is proved by the fact that, in ordering the examination of June 9, 1895, relating to another subject, he ended his writ with the following order: "And let the attorneys of the prisoners know it, in case they wish to be present at the proceeding, and for the purposes of the right granted them by the law."

Now, in the examination of the handwriting of the document which is supposed to be a colonel's commission signed by Sanguiy this same judge suppressed the summoning of the prisoner and his counsel, and took care to summon the prosecuting attorney alone; and the latter, the judge, the notary, and the experts alone being present, the experts took the oath in the form appearing in the minutes, and which is directed by article 474 of the law, and declared in the most solemn manner that they believed the handwriting to be Sanguiy's.

No one can doubt the nullity of such a proceeding. The law, both that of the nation and that of the treaty, appears to have been knowingly violated by the examining judge, and nothing resulting from such a proceeding can have any judicial force.

Nor has anything been done to remedy the fault committed, as "the same experts" appointed by the prosecuting attorney for the oral trial—those already bound by the oath which they had taken—must necessarily repeat what they had said, under penalty of committing the crime of perjury. Hence, we hold that, for all legal purposes, the void proceedings in first instance are the same that are reproduced here without alteration; and, if they were instituted in the first instance without summoning the prisoner, and are, consequently, void, they continue to be so now; and it follows that the handwriting of the said document has not been recognized by anyone. The experts being the same in this superior court, and being bound by the oath which they took in the inferior court, the want of liberty under which they now labor to dissent from what they said before renders the expert proceedings the same now as

those which were instituted before; and if they are void in one of their stages they are necessarily void in the other.

To sum up, the experts first selected could not, according to their own voluntary statement, reproduce the text of the injured document; and the other experts have not recognized the handwriting in it; and, consequently, the evidence which the prosecuting attorney might have found in the said paper vanishes.

#### THE LETTER TO BETANCOURT.

This must be considered separately, alone, without connection with any other document of evidence in the case, as all of them, General Calleja's declarations and the paper found on Azcuy, have no existence in the proceedings, for the reasons given for their rejection. There is therefore no way of connecting this letter with any other document. It must therefore be taken at its own intrinsic value; it must be weighed by its precise words.

To what does it amount in its essence and meaning? Simply to an intention. According to the letter, Sanguiy intends to place himself at the head of a "work of redemption," which other people's imagination may presume to be the insurrectionary movement. Even in that case the act does not pass beyond the domain of intention.

Is this punishable? No; not until it is followed up by actions.

A distinguished lawyer of our bar, having been consulted specially on the subject of this letter, expressed in his reply the same view as that which we have stated.

In view of the weight to which his opinion is entitled, we are happy to appropriate his remarks, which treat the question fully and fairly. I give some extracts from his opinion:

"What crime would have been committed if the letter had said, in so many words, 'I need \$2,500—not a cent less—to place myself at the head of the revolution, and I beg you to send me that sum, as I have no one else to apply to?' This is not the crime of rebellion, because Sanguiy did not rise publicly and in open hostility against the Government (article 237). Nor does it appear that he induced Betancourt to revolt. It rather appears from the letter that Betancourt was interested in having Sanguiy rebel, and that the latter attached a condition to it.

"It is true that others rose in rebellion; but, either because that condition was not fulfilled or because he did not wish to rebel, the fact is that on the 24th of February, at 7 a. m., Sanguiy was sleeping quietly in his house when he was arrested by the police.

"There is no evidence that Sanguiy was the person designated to head the rebellion; no doubt, as he was a leader in the ten years' war, it might reasonably be thought that he would have been regarded in that light if he had rebelled.

"There is, therefore, on the part of Sanguiy, so far as the letter is concerned, no consummated nor prevented crime nor attempt at rebellion. The letter, even when taken in connection with other evidence, does not reveal any fixed and absolute intention of rebelling, as he attaches a specific condition to it, and as a mere intention it is not punishable."

Carrara corroborates these views in the following language: "To find the attempt in the mere intention, however firmly resolved to do an injury without the actual commission of that injury, is the same thing as to punish the simple intention, taking the mere moral beginning as the basis of the political guilt."

Pessina expresses the same views in the following words: "It is a universal principle in legislation and science that the criminal intent does not constitute a crime, but that it is necessary that an illegal overt act should appear."

And Don Joaquin Francisco Pacheco, to conclude the citations, treats this point in the following manner:

"The thought of evil is what first presents itself—like a cloud darkening the serenity and purity of the mind. The wish, with its hesitations and doubts, follows; then comes the decision; then, perhaps, the participation or agreement with other persons; in some cases the threat follows; preliminary acts frequently come next; and after all this there may be beginnings of execution, suspended by the will of the criminals themselves; there may be abortive attempts; there may be, lastly, frustrated crimes; and all this without there having been real crimes.

"There may be in these thoughts, in these wishes, in these decisions all the moral, purely moral, evil that can be imagined, and divine justice, before which all the depths of the intention are revealed, will doubtless weigh them and punish them with as much severity as if they had been converted into acts and completed the circle of their aims. But we have already seen, some lessons back, that neither the power nor the right of human justice goes so far; its nature limits it to correcting those evils which cause substantial, visible injury to society, and its means, which are powerless to scrutinize crimes of intention, prohibit it from passing that line, and chain it within material limits. Its want of right and its want of power, therefore, evidently unite in this case to oppose to it a barrier which it is unable to overthrow.

"Human justice has not yet any hold on the person who has resolved to be a criminal. It may have it if, among the acts preliminary to the execution, there are any which have in themselves that character; but if, in themselves, they are harmless, if the whole evil of their execution consists in the moral evil derived from the intent with which they are carried into execution, this fact in itself proves that they have not yet come under the jurisdiction of the powers of this world, and that they can not be punished by those who can not rise to the region of conscience. All that the authorities can and should do consists in watching those who show by their actions that they are possibly cherishing criminal designs. It is just that their conduct should be marked and investigated; but there is always a considerable interval between measures of police and those of criminal procedure, and one which can not be overstepped without legitimate grounds without the existence of an actual crime."

I did not intend to speak of the letter which appears at folio 94 of the record, because, in reality, it is not of a nature to exercise any influence on the result of the trial; but it is mentioned by the prosecuting attorney, and this compels me to refer to a document which did not come into this case by the middle door, the legal channel. It has a spurious and repugnant origin. The person who presents it has informed us that he obtained it by committing an act, more than an abuse of confidence, an act of actual fraud. If I wished to use hard words concerning this base act of the police, I might say that the proceeding in the case of the letter might be characterized as taking possession of another person's personal property without the use of force toward the article or of violence toward the person, under the stimulus of an ardent desire to gain reputation or credit, all which constitutes the definition of a crime given in the criminal code.

But I refrain from raising any objections on this point.

It appears that the person who obtained possession of the letter states candidly that, having learned that some furniture was for sale at Señor Portela's works, he pretended to be a furniture dealer, went on the premises, and made that statement to the servant, Caridad, who has testified in this trial. He procured from her admission into the house, in company with another policeman, and the two secretly possessed themselves of some papers, among which, they say, there was a diary of Sangüily's, from which fact the prosecuting attorney immediately assumes, gratuitously, that the fact that the letter belonged to the prisoner appears to be proved.

And I take the liberty of assuming that the whole thing is a mere invention of the police; and the assumption is probable, in view of the fact that the entrance into the house and the search were made in a manner positively forbidden by law.

Even if this were not the case, it would still appear that the letter was not found on Sangüily; that it is not shown that it was addressed to him; that the handwriting is not his; that it was seized in another person's house, and in such an absolutely illegal manner that I have characterized the act as punishable under an article of the criminal code.

Besides, the letter says generally that it is greatly to be regretted that the revolutionists who were exerting themselves abroad could not count on the powerful aid of the anonymous person to whom the letter is addressed. The date of the document is September 8, 1893. In what way can this document prejudice Don Julio Sangüily?

There is another circumstance which, though trifling, is not without its relative importance in this case. It is assumed that the prisoner was the chief of the provinces of Habana, Matanzas, and Santa Clara, and Azeny's appointment appears to have been made for Pinar del Rio. How, then, could it be issued by the supposed chief of other provinces?

The fact is that the truth is brought out by all the deductions, great and small, that are attempted to be drawn from it. It is not true that Sangüily was the selected leader of the revolutionary movement which was about to take place, and, as this is the truth, there is no evidence, however insignificant it may be, that fails to corroborate that fact.

The jurisdiction of the court is great, omnipotent, so far as relates to the weighing the value of the facts proven. Neither the King nor the Cortes nor the supreme court has the right to interfere to modify what your excellency has declared to be a proven fact. But can such a fact never be the product of invention, of caprice, of intuition?

No, your excellency, such a proven fact, constituting guilt, does not arise in the mind of a magistrate by spontaneous generation; it is produced by external elements, and in this case the evidence, in all its parts, the documentary, that of the experts, and that of the witnesses, all combine to impress upon the mind of the court that the only fact really proved in this trial is the full and complete innocence of the prisoner, who has been wrongfully accused by the prosecuting ministry.

But it is said that a political principle is involved in this case. Does it follow that your excellency, in your character as a citizen, actuated by the purest patriotism, must look with involuntary abhorrence upon a prisoner to whom contrary views are

attributed? It makes no difference, as he can not be convicted, consistently with the requirements of justice, upon vague and intangible suspicions excited by patriotism. The famous words, uttered on a day which was a sad one for justice, "I look for judges and I find only accusers," can not be heard in an impartial court like this.

I care not for the assumption of the fact that Don Julio Sanguilý is believed to be a sympathizer with revolutionary ideas. This has only a political bearing, not a judicial one. Your excellency has a loftier duty to perform. You do not know the prisoner; you are ignorant of his antecedents; you do not deduce proven facts from portions of his personal history; and you are trying this man by what appears from the evidence, acquitting or convicting him. And that evidence, as your excellency has seen, only refutes the assertions of the prosecuting attorney.

What remains for me to say in contradiction of what has been stated by the prosecuting attorney is of secondary importance. There remain only confused and disjointed fragments of the primary charges. The apparent reality created by the argument of the prosecution has disappeared. There are no convicting charges. There remain the secondary charges, which I proceed to refute rapidly and briefly.

The pawned revolver and machete: If they were pawned before the 24th of February it tends to prove that the intention of rebelling on that day had not entered Sanguilý's mind.

The prosecuting attorney said that he did not think that the counsel for the defense would resort to the expedient, which he characterizes as vulgar, of finding fault with the employment in this trial of the preliminary proceedings. In this instance the public ministry is right. If the counsel for the defense wished to raise difficulties unworthy of the solemnity of this trial—for a controversy in which one party demands the unconditional acquittal of the prisoner and the other asks that the penalty of imprisonment for life be imposed upon him is always solemn—he would say what is the indisputable truth, to wit, that the preliminary proceedings are void from the first to the last line because the treaty of 1795 with the United States, still in force, prohibits in its seventh article all secret preliminary proceedings.

On the other hand, if the prosecution modified its position and, having been defeated on the untenable point of the rebellion, persisted in that of the conspiracy, it would still be in the wrong, because a conspiracy requires the agreement of wills for the commission of a crime and the determination to commit it; and from the evidence in this case there appears only the vague expression of a wish, an isolated and conditional intention at the most. I have already spoken at length on this point in discussing the letter supposed to be addressed to Betancourt, which letter, by the way, both Sanguilý and Betancourt disown.

The prosecuting attorney does not regard the alternative form employed by the defense in its inferences as consistent with legal procedure. Without entering into a useless discussion on the subject, the counsel for the defense insists that the law does not authorize the mode of prosecution employed; and even if this were not the case, pardons have a general and obligatory character and can not be waived. The ingrates who repudiate them receive the same benefit from them as those persons who gratefully accept them.

It is, in my opinion, indisputable that General Calleja's proclamation applies to the case of Don Julio Sanguilý. As the criminal law is always construed in favor of the prisoner, as in the high state of our civilization and according to the present views of justice, not the justice of the inquisitional epoch, nor that of the council of ten, it is not permissible to say to the prisoner, "As I imprisoned you before you committed the crime, I pardon the principals, but I except you. I condemn you as guilty of the attempt, although I pardoned those who consummated the crime."

And, lastly, all doubt on this point is removed if we consider, as a practical example, what occurred in the case of Betancourt. He was not a rebel who had risen; he was a mere conspirator. He hid himself on the 24th of February. This is stated by the district government of Matanzas and by the chief of police in this city. Now, this head of a conspiracy, this conspirator who did not rebel, who hid himself at the time when the revolutionary movement broke out, sent an agent to the governor of Matanzas as soon as the amnesty was proclaimed, and asked him whether the said amnesty included him; and the governor, after consultation with his excellency the Governor-General, decided that it did include him. A passport was consequently issued to Betancourt, enabling him to take his passage freely for the peninsula. All this is fully proved in the case. Sanguilý's case is identical with that of Betancourt.

All the charges of the prosecution having now been refuted, I cherish the full conviction that there is not a single proof on which to base the prisoner's guilt. And this being true, and there being nothing upon which to base the supposed guilt of the prisoner, I rise, in the name of justice and the law, to ask the court to be pleased, first, to render a judgment of acquittal; and, secondly, to order my client's immediate release.

[From the *Diario de la Marina*, Saturday, November 30, 1895.]

# SANGUILY'S CASE.

## REMARKS OF THE COUNSEL FOR THE DEFENSE.

The argument of the Government attorney having been made, the presiding judge told the counsel for the defense that he was at liberty to speak. Don Miguel Viondi, the distinguished lawyer, began by saying that the defense of Don Julio Sanguily was an easy matter. I should have been glad, said he, if my client could have been defended by some great legal light, but the task is so easy that a lawyer of moderate abilities may undertake it without hesitation.

He added that he hoped to prevent the act of his client from being characterized in the sentence as an act which had been proved and which constituted a crime. The charge made by the Government attorney seemed, he said, like a romance, which could only acquire force and dimensions in the fertile soil of the imagination.

He expressed his astonishment that the Government attorney had not modified his argument in such a way as to ask for the discharge of the prisoner. That argument, he said, was full of exaggeration. He attributed this fact to the moral pressure exercised on the mind by ideas under whose influence certain views are accepted as true, which, in point of fact, are but the illusions of a disordered brain.

Passion, which is a bad adviser, especially in judicial proceedings, is, in political cases, necessarily derived from preconceived ideas, and when such views, as is now the case, are wholly at variance with those of the person who is on trial, the latter has to face a multitude of prejudices, and the Government attorney, who should be the impassive representative of the law, unwittingly yields to his feelings.

The feeling of the counsel for the defense is different, and the proceeding of which he must avail himself is different. To the vague assertions of the Government attorney he will oppose his own, which are positive and decided, and to each one of them he will add an indisputable fact.

Your honor will now see that the Government attorney has no ground to stand on, while the counsel for the defense will, by his irresistible arguments, carry the court with him and secure its unanimous vote, and that without any fawning or flattery, but by the justice of his cause alone.

The counsel for the defense further said that he intended completely to demolish the arguments of the Government attorney and to secure an acquittal from the court. He developed this view in various aspects.

The first proposition, said the learned counsel, which I am going to submit to the court for examination and to which I should have been glad if the Government attorney had paid some attention, because, notwithstanding his audacity—

(The presiding judge here called the counsel for the defense to order.)

In this case, your honor, there has been neither a public trial nor a prisoner. On the occasion of the last session the court should have observed that there was no prisoner here.

Counsel then stated that proceedings were begun by the military authorities; that the United States consul requested those authorities not to continue the trial, and that the Governor-General, in compliance with that request, had the proceedings transferred to the civil authorities. There was no doubt, and no discussion.

Citizens of the United States can not be tried by the military courts of Spain, unless they are taken with arms in their hands.

He then read the warrants for the provisional arrest of Mr. Sanguily and the protest of the United States consul, based upon the fact that no citizen of that country, residing in Spain or the Spanish possessions, and charged with the crime of rebellion against the integrity of the territory or other similar acts, can be tried by a special court, but that he must be tried by the ordinary courts, unless taken with arms in his hands, so that, in pursuance of the instructions of his Government, the United States consul had most solemnly protested against all action by the military authorities in trying the case of Sanguily.

The protest was accepted by the General Government. The warrant of the judge who conducted the preliminary examination can not be valid, because in default of other grounds he bases the warrant for the prisoner's arrest on the information transmitted to him by the military court.

I consider that this is the way in which international conflicts are created.

He next spoke of the case of a citizen of the United States in Madagascar, whom the French considered as a spy. In this connection he developed various theories of international law, and added that this case might occasion a conflict in which our nation would not get the best of it [excitement].

Everything has been done in this case on the ground of a mere charge which has not been confirmed. On no other basis than this a warrant is issued and my client is arrested and refused even the right to furnish bail. In the meantime his crime,

which is supposed to be of immense importance, is, in point of fact, a very insignificant matter.

This trial is based upon a false foundation, or, rather, it has no foundation at all.

But, even admitting that the case is as stated by the Government attorney and accepting his views as my own, still no punishable case has been made out. This I propose to show so clearly and in such a way that the court will have no doubt, and even the Government attorney will, I think, in his inmost soul, think just as I do.

If, after what I am going to say, a single word of the Government attorney remains undemolished, I will accept a condemnatory sentence for my client.

The first assertion of the Government attorney was based upon false elements. The Government attorney accepted them because they came from a high source, and he thought that that source was infallible. Such an element, however, is of no value in this case.

I do not see how a charge can be sustained when it may cause a person to be imprisoned for life, unless, indeed, it has perfectly overwhelming evidence to support it.

(At this point the presiding judge inquired of the learned counsel whether he still had much to say, and on receiving an affirmative reply adjourned the court until 12 o'clock at noon yesterday.)

The court was opened yesterday at half past 12 and Mr. Viondi continued his able argument, a summary of which we give below.

I propose, said he, wholly to demolish every assertion contained in the argument of the Government attorney, and, when I have done so, I shall have a right to hope that your honor will not consider that my client has been proved to be guilty of any crime.

My work must necessarily be analytical, long, and tiresome, and I consequently need all the attention of the court, proposing, with the tacit approval even of the Government attorney, to demonstrate the fact that his argument is erroneous, fanciful, and groundless.

I shall begin by repeating to your honor the argument of the Government attorney, with a view to demolishing it point by point:

Mr. Sangui, an American citizen born in the island of Cuba, was, up to February 24 of the present year, one of the most active abettors of the insurrection, and was designated to be the leader of the insurrectionary movement in this province and in those of Matanzas and Santa Clara, in furtherance of which object he issued, as the leader and principal chief of that movement and as a delegate of the revolutionary junta in New York, such appointments as he thought proper, among them the appointment of Don José Inocencio Azeu as a colonel in the insurgent army. I am going to divide this assertion into four parts:

1. Until February 24, the day when he was arrested, he was one of the most active abettors of the insurrection.

2. He was designated to lead the insurrectionary movement in this province, and in those of Matanzas and Santa Clara.

3. As the leader and principal chief, and as the delegate of the revolutionary junta in New York, he made such appointments as he thought proper.

4. Among these was the appointment of Don José Inocencio Azeu as colonel.

If this assertion could be proved, the prosecution would be entirely right and the efforts of the defense in this case would be of little avail. On the other hand, if the source from which this assertion has been taken is vitiated; if, in the analysis which I shall make of that source, I reveal a series of inaccuracies of which there is abundant proof; if it shall appear that there is no basis whatever for the argument of the Government attorney, the entire edifice which he has raised falls to the ground.

The Government attorney read a document yesterday which he quoted in his argument and which document is the following: (Counsel here read General Calleja's official statement, which is already known to our readers.)

Here an authority speaks, a high functionary, and for all legal effects that functionary exists as long as the charge exists of which he is a mere agent.

The Government attorney had not asked General Calleja's ratification, but it is a positive fact that the Governor-General was the person who made that declaration and it is important to know and to consider who made those revelations to him. Well, their origin deprives them of all validity.

The chief of police has stated, and he ratified that statement yesterday, that he had no information except public report. So that if that is his only authority, the argument of the Government attorney is reduced to a literal copy of General Calleja's declaration, which was simply an echo of the information, based upon mere rumor, that was furnished by the police.

The words Habana, Matanzas, and Santa Clara are not found save in General Calleja's declaration. There is nothing else to attest their genuineness, and I propose to prove that those words have no foundation whatever.

The examining judge, who held the preliminary examination when the military

authorities no longer had anything to do with the case, thought, very properly, that that declaration of General Calleja was not valid, it having been made in a proceeding which was null and void; he desired that the general should ratify the proceedings, and to that end issued an order requesting the Captain-General to state whether he had received any subsequent information confirming his statements.

He was told in reply that there was no information in the Captain-General's office, bearing date of August 10, of the present year, and signed by Captain-General Martinez Campos. The judge then addressed a communication to the Governor-General and was told that the desired information did not exist in that magistrate's office either.

Now, your honor, it appears that a declaration is on file, but that the statements which it contains can not be confirmed; that the police base their belief simply on public report; and it next appears that the examining judge addressed the Captain-General and the Governor-General, soliciting the information which had been promised, and that he was told in reply that that information was to be found neither in the office of the Captain-General nor in that of the Governor-General. To what, therefore, does the assertion of the governor attorney amount, since it is a mere copy of the declaration made by General Calleja, which has in no wise been proved? And if all its statements are demolished, what value has the argument of the Government attorney?

I might have raised an objection in that which refers to General Calleja, but this might have originated a certain degree of doubt, and it has seemed preferable to me, in conducting this defense, to oppose to General Calleja's assertions those of one who is as great a man as he is, and who represents at least as much as he does: I mean Gen. Martinez Campos. This is no dispute between the humble lawyer like myself and the distinguished Government attorney; the issue lies between General Calleja and Gen. Martinez Campos. The latter general stands before the former with the importance, not of his position, but of his person and his history, which are admired both in Spain and in other countries.

The Government attorney then says, referring to Sanguly, that, as the leader and principal chief of the movement and as a delegate of the junta in New York, he made such appointments as he thought proper, among them that of Don José Inocencio Azcuy as an insurgent colonel.

Observe, your honor, in the first place, that even if this story about the appointment of Azcuy were true, it would not have the importance which is sought to be attributed to it, those assertions being demolished.

It is not the same thing when a person having authority makes such appointments and when another, who has no authority, does it from caprice. The importance of the fact would lie in Sanguly's really having been a delegate of the Revolutionary Junta. But if this were not the case, if it should appear (I am speaking hypothetically) that Sanguly had made that appointment on his own responsibility, just as if I, in a fit of insanity caused by a troublesome situation, should appoint colonels in my mere capacity as a lawyer, what importance would this have? It would be a stillborn child, and could have no effect whatever.

The Government attorney, perhaps owing to his excessive fluency of expression, has exaggerated the crime with which he charges Sanguly by putting it in the plural, since he speaks of appointments, when there is but one appointment in the case, and this is nothing but a paper, the writing on which can not be deciphered.

How does the Government attorney know that that unintelligible paper is the appointment of a colonel? He must have found it out by divination, since there is no record and no elements sufficient to authorize him to assert it.

The Government attorney has told us (and I believe it) that he who has special knowledge as a reader of documents has most carefully studied the fragment of the letter in possession of the court, and that he has deciphered its contents. He will not, however, be offended if nobody believes him on his word; and if every one, especially the court, declines to recognize him as possessing any authority in this matter, although he has such high authority as the representative of the Government, who is probably soon to be appointed to a magistracy, nor will he be offended if great importance is attached to the authority of the experts who are acting in an official capacity; that is to say, to those gentlemen who have declared, and ratified their declaration, that the document is absolutely undecipherable. If that document, then, had been issued by Sanguly, it would have had no authority, having been issued by a private individual, and even then there is nothing to show, nor is there any ground to assert that it was issued by Mr. Sanguly, since two of the experts disagree entirely with the conclusions of the Government attorney.

But the Government attorney will say: "Azcuy affirms it." And I say: "Sanguly denies it." And as we have before had to deal with the opposing opinions of Calleja and Martinez Campos, so we now have the opposite assertions of the Government attorney and of the experts.

It is to be observed that, in that document, there appears a P, which can not be

explained, by the side of Sanguiy's signature. Azeuy states, moreover, that that document was given to him by a nephew of his, who had received it from the Revolutionary Junta. The court will please consider that Mr. Sanguiy, who was in Habana, could not have issued that document.

But Azeuy says, in his statement, something that deprives that document of any importance. A Mr. Collazo, who is an influential member of the New York Junta, said when Azeuy presented himself with the document, that he did not recognize him as having any authority, because such military grades were earned in war.

That paper, therefore, has no significance whatever. Even if it were intelligible, it would be of no importance, since its importance would depend upon the authority of the person who issued it; as it is, it is nothing but a piece of paper without any meaning whatever. That document, moreover, is written in a hand which is not Sanguiy's, nor has it been recognized as such, since Mr. Biosca, the expert, who declared that it was the same as that of the other letters written by Sanguiy which are in possession of the court, had no right to make a statement before the civil authorities, since he was bound by the oath which he had made before the military authorities. I can not understand how the Government attorney has introduced that expert here, since he necessarily, and even under penalty of being prosecuted for perjury, had to repeat what he had stated before the military authorities.

The experts, moreover, were not summoned according to law. In the treaty concluded by Spain with the United States, which was signed in 1795, ratified in 1819, and definitely confirmed in 1821, as likewise in the protocol of 1877, it is provided that persons of both nations who are under prosecution shall be permitted, with entire reciprocity, to employ lawyers and attorneys in whom they have confidence, and that they may cause them to take part in any business that they may think proper, any secrecy in the preliminary examination being prohibited.

This course was pursued when experts were summoned to examine the letter addressed by Mr. Sanguiy to Dr. Betancourt. The attorneys of the parties were then summoned, but when it was sought to compare the handwriting of that letter with that of the so-called appointment as colonel and to amplify, at the same time, the investigation concerning Messrs. Sanguiy and Azeuy the Government attorney alone was present, the attorneys of the accused parties not having been summoned, so that Mr. Sanguiy was deprived of the guaranties of the treaty of 1795.

The proceedings of yesterday are, as regards their legal effects, null and void, and it may consequently be asserted that neither the document in question was issued by Don Julio Sanguiy, nor has it since been elicited, nor the handwriting recognized.

Now, if this is so, what remains of the argument of the Government attorney? I divided it into four propositions; some are contradicted by the Governor-General, and the others are entirely demolished in the analysis which I have made of the facts. I therefore have a right to say that no legal charge has been formulated here against Don Julio Sanguiy.

The learned counsel then said that he had not thought of referring to the anonymous letter in possession of the court, in which Sanguiy is urged to direct the revolutionary movement, because that letter did not properly come into the possession of the court. It was apparently taken from a closet in which Mr. Sanguiy kept some of his effects on the estate Portella. The person who took it did so against the will of its owner. That person was a policeman, who at the same time took what is said to be a diary kept by Sanguiy, and, as the proceeding was a repulsive one, and moreover as nothing shows that that letter was not written by the policeman himself, counsel did not think that the court should pay any attention to such a document, the manner in which it was obtained being inadmissible and repugnant to every feeling of propriety.

But, at all events, as in that letter Sanguiy is urged to lend his support to the revolution, the letter becomes evidence that Sanguiy had nothing to do with the movement.

Let us now take up a highly important subject; and I will begin by admitting to the court that I propose to refer to the only document that has given rise to any doubt. I mean the letter written to Betancourt. But does that letter to Betancourt say anything? There is something vague and confused that might be converted into a charge against Sanguiy; but when all the previous arguments of the prosecution are reduced to zero, how should that letter be considered? It should be considered as alone and isolated, without connection of any kind.

(Counsel here read the last lines of the letter, which are as follows: "Cervantes did not eat any supper when he had finished Don Quixote, and I, being about to place myself at the head of a work of redemption, have not the means to send my cook to market.")

The Government attorney understands that that work of redemption is the revolutionary movement. Well, I will accept that as a hypothesis, protesting, however, against any such interpretation. But even thus, that reveals nothing but the intent

to commit an act. And where and when do his intentions subject a man to punishment? An intention is punishable only when it is carried out; only then can it furnish ground for repression; but the most frightful and guilty projects escape punishment so long as they do not go beyond the recesses of one's mind.

When that letter was written—that is to say, on the 9th of February, 1895—the utmost that could be supposed was that Sanguiy was thinking of placing himself at the head of a movement, no one knowing what is the exact meaning that is to be attributed to that expression “at the head.” But if the facts have deprived the intention which the writer of the letter may have had of any force, why does the Government attorney consider it as a charge?

Any doubt that I may have had on the subject has been dispelled not only by the writings of the ablest lawyers, but by the opinion of a distinguished legal gentleman of this bar, who is respected by everyone.

(He here read an opinion of that gentleman, whose name is not given, in which it is stated that if Sanguiy had, for instance, asked for \$2,500 to enable him to place himself at the head of the revolution, he would not have committed the crime of rebellion, because he laid down conditions to someone who desired him to take up arms, and confined himself to expressing an intention which was subject to determinate conditions.)

The learned counsel, however, quoted from Carrara, Pessina, and Pacheco, with a view to showing that intentions are not punishable; that they escape human punishment, and are punished in spiritual relations only. He then said that, even though all the proofs that had been demolished were still conclusive, we should then have nothing more than an intention to deal with.

The proceedings were adjourned at half past 2, owing to the fatigue of the learned counsel. They were shortly afterwards resumed, when he continued his argument. The documentary evidence and the evidence of experts being now at an end, and the evidence of the witnesses having been treated at considerable length, I propose, said he, to speak of another witness, viz, Don Ramón Sanchez, the owner of the pawn shop.

According to the statement of the Government attorney, Mr. Sanguiy was regarded as the leader of the revolutionists who were to rise in Habana, Matanzas, and Santa Clara. It has been said that in this rather extensive circle of authority, but only within it, could he make appointments, and nevertheless this contradiction arises. A Mr. Azeny, who says that he had received an appointment as colonel, signed by Sanguiy, does not figure in any of those provinces but in that of Pina del Rio. Observe the evident contradiction. By what authority was Mr. Sanguiy, a leader in Habana, Matanzas, and Santa Clara, to authorize appointments in Pinar del Rio? The truth is that, as Don Julio Sanguiy was not a revolutionary leader anywhere, that document, which at first seemed to be overwhelming, turns out to be in Sanguiy's favor. There are no witnesses here from Habana or Santa Clara, but those from Matanzas have positively and categorically said that they recognized Mr. Betancourt as their leader, and that the band was led by Coloma, who yesterday made a statement to the same effect. To this argument, therefore, the other is added.

Mr. Viondi then indulged in a lofty flight concerning the omnipotence of the court to declare the facts proved, saying that, in a monarchical government, not even Parliament has so much authority; but that this very fact imposes an immense responsibility upon the court in rendering its decisions.

In this case, a proved fact can not be deduced either from the documentary evidence nor from that of the experts and the witnesses.

What is a political cause? Is there anyone here or in a foreign country who will dare to formulate any charge against your honor? Prominent men are always exposed to be both praised and criticised. Your honor, as a man of the purest and most genuine patriotism, must feel repugnance at seeing an accused person to whom views are attributed which he does not entertain. No matter, your honor does not come here to discharge any function other than an impartial inquiry into the facts. A condemnatory sentence can not be pronounced in the name of patriotism. No, your honor, no; those words which were uttered before a revolutionary tribunal, “I ask for judges and find nothing but accusers,” have been banished by modern civilization from our judicial proceedings. What matters it that Don Julio Sanguiy may have been suspected as a sympathizer with the revolution? This is considered in the political order of things, but your honor has a higher duty to perform. You do not know the prisoner, you are ignorant of his antecedents; you judge the man here for that which he is, and confine yourself to his penal history, the evidence of which is on file in this court.

Proved facts do not grow out of a sudden inspiration; they have their root in the inner conscience, and no one can dare to penetrate the inner conscience of the court; but they do not arise as a spontaneous production, they are formed of external ele-

ments which combine and give rise to conviction. And if from all these proceedings not even a remote fact is obtained, if those elements do not exist, whence is the proved fact to arise?

I hope your honor will consider the statement made by the owner of the pawn shop, who says that Sanguiy pawned a revolver and a machete at his place; but that the month of February came, and that Sanguiy had not redeemed that revolver and that machete. Your honor is aware that Sanguiy's pecuniary situation was not brilliant, and it was very natural that when he was able to purchase what he needed for a small outlay he should not make a larger one. I understand, therefore, that the statement of the owner of the pawn shop is a confirmation of the fact that Mr. Sanguiy did not think of taking any part in the revolutionary movement.

The Government attorney also said, although I will not stop long on this point, that he supposed that the counsel for the defense would censure the proceedings had at the preliminary examination. Since I who am convinced that these public trials are composed of everything, of the air which is breathed, of the paleness of the prisoner, of the most trifling details, I shall not disdain the elements furnished by the preliminary examination.

If I desired to create incidents not in harmony with the majesty of these proceedings (since a trial in which one party demands the acquittal of the prisoner, and the other demands his imprisonment for life, is always solemn) I should say that the preliminary examination was null and void from its first to its last line, because the treaty of 1795 with the United States prohibits any secret examination, and that clause was here violated. A Spanish citizen can not be prevented in the United States from taking part in all the proceedings of an examination, for if he should be, it would be a violation of law. Here, however, important proceedings have been held, in which my client has not been allowed to take part; there has been a secret examination.

But the Government attorney might say: It is true that there is no rebellion; it is true that those documents furnish no proof of the existence of one; yet the conspiracy remains.

It might be and would be punishable, but a conspiracy requires two elements—a concert of purpose and the intention to commit the act.

A conspiracy, according to the code, exists only when two or more persons arrange to commit a crime and resolve to carry out their purpose. In the letter attributed to Betancourt there is nothing but the vague expression of a desire; there is nothing but an intention. Sanguiy, moreover, denies the genuineness of the document, and Betancourt, under oath and with all legal formalities, denies it before the United States consul, saying that the letter is spurious.

Passing on to another point, I must express the surprise which I felt when I heard that the Government attorney had said that this defense had not been conducted on correct lines because I had made an alternative request. If his client should not be acquitted, counsel had asked that he might be pardoned on the ground that he was included in the proclamation of February 27. The law does not prohibit the course which I have pursued, and I have based my action upon the provisions of the law.

I should be glad, however, if the Government attorney were right even for this once, viz, in saying that my request for a pardon could not be made in the improper form in which he alleges that I made it. But it is the same thing. A pardon has a general obligatory character and can not be renounced. It embraces him who is grateful for it, and favors the ingrate who feels no gratitude.

I say that the pardon, by its terms, embraces Don Julio Sanguiy, even if he should be condemned. Does it favor the prisoner? Well, it embraces him. Was it extended on account of acts committed at the time when he was arrested? Yes. The justice of to-day is not that of the Council of Ten of Venice. Justice favors the prisoner, and the judicial code of this age of the world is not that of the Inquisition.

No one can say: "I keep you in prison; I pardon those who committed what you intended to commit, and I keep you in confinement." No, the law is not now interpreted in that way; the law favors the prisoner so far as is compatible with justice, being based upon the humanitarian principles of Christianity.

But if this were not sufficient, there is a practical fact in this case. I refer to the case of Dr. Betancourt. He is not a rebel; he was a conspirator, the leader of those who rose in Matanzas. But the movement was inaugurated on the 24th of February; Betancourt took no part therein and hid himself; the pardon of February 24 was published, and Betancourt, who had committed no act of rebellion, who had not risen in arms, who was in the same situation in which the police think Sanguiy is, asked the authorities of Matanzas whether he was embraced in the pardon. As those authorities could not decide the question, they referred it to General Calleja, who, in reply, said, "Yes;" and Betancourt was pardoned and received a passport for the Peninsula.

Betancourt's case was therefore identical with that of Sanguiy's, and the pardon extended to Betancourt should necessarily be granted to Sanguiy.

It seems to me that, inasmuch as I have demolished all the charges made by the Government attorney, I have a right to the conviction that there is not a single fact on which the guilt of the accused can be based. This being so, your honor, and as there is no cause on which a charge of guilt can be based, since all the theories of the Government attorney have been overturned, I think that in the name of justice and of the law I may ask your honor, in the first place, to acquit my client, and, in the second place, to order his release.

When Mr. Viondi had finished his argument, Sanguiy was asked by the presiding judge whether he had any statement to make to the court, and, as he said that he had none, the proceedings were declared closed, in order that sentence might be pronounced.

## ERRATUM.

In our edition of yesterday morning, in the report of the statement made in his examination by Don José Inocencio Azeny, which was read by the clerk at the request of both parties, an error occurred, which we hasten to correct.

Where it says that Enrique Collazo confirmed the appointment as colonel, it should say that he did not confirm it.

[From the *Diario de la Marina*, Tuesday, December 3, 1895.]

## SANGUILY'S CASE.

## THE SENTENCE.

Yesterday, at twenty minutes past 4 in the afternoon, the third section of the criminal court of this audiencia having met, the sentence of that court in the case of Don Julio Sanguiy for the crime of rebellion was read by his honor Don José Pulido y Arroyo. The text of his sentence is as follows:

"In the city of Habana, on the 2d of December, 1895, the case, which had previously been before the examining judge, having been tried in public before the third section of the criminal court, one of the parties thereto being the Government attorney and the other the attorney Don Luis Plutarco Valdés, under the direction of Don Miguel Francisco Viondi, acting in behalf of and representing Don Julio Sanguiy y Garit, a native and resident of this capital, an American citizen, 44 years of age, married, son of Don Julio and Doña Maria, of the mercantile profession, a man of education, without penal antecedents, arrested and placed on trial for rebellion, in which case the proper legal customs have been observed."

The sentence was read by Don José Pulido, the presiding judge of this court.

1. Whereas, in the proceedings instituted by the military authorities for the crime of rebellion against Don Eladio Larranaga, Don Julio Sanguiy, Don José Maria Aguirre, and others, it was ordered that testimony should be taken concerning everything relating to the aforesaid Sanguiy and Aguirre, in order that it might be turned over to the civil authorities, for the reason that, according to the protocol of January 12, 1877, those authorities were the ones competent to take cognizance thereof, the prisoners being citizens of the United States; and the said testimony having been sent to the senior judge, he in turn transmitted it to the examining justice of the district of El Cerro, who proceeded to examine the case;

2. Whereas it is proved that Don Julio y Garit, whose affiliations were with the separatist party, in which he enjoyed influence and prestige owing to the services which he had rendered to the rebel cause in the insurrection which ended in 1878, sustained relations with persons residing in this island and abroad, for the purpose of organizing an uprising to secure independence, and was one of the abettors and leaders of that uprising;

3. Whereas it is proved that Don Antonio Lopez Coloma, a resident of the jurisdiction of Matanzas, came to this capital on the 21st of February for the purpose of receiving orders and instructions from Don Julio Sanguiy, and of agreeing whether the cry of "Hurrah for independence!" was to be raised or not, they agreeing that the uprising should take place on the 24th, as it did take place, various bands rising in arms in open hostility to the Government, with a view to proclaiming the independence of this island, Lopez Coloma being in one of those bands, and the said Coloma having been taken by the forces of the army, and several weapons and various documents having been taken from his person, among them a letter written by Don Julio Sanguiy, dated February 9, and addressed to Mr. Betancourt, who was also concerned in the uprising, in which letter Sanguiy, after lamenting his lack of means, and saying that he was so poor that he was unable to take the field and redeem a machete and a revolver which he had in pawn, urges Betancourt to get for him as soon as possible the \$2,500 which he had promised him, adding that he had no head to think about anything that was of interest to him, and concludes by saying that while on the point of placing himself at the head of a work of redemption he had not even the means to send his cook to market.

4. Whereas it is proved that at the time when the letter in question was written Sanguiy had in pawn, in the pawnshop known as La Equitativa, a machete and a revolver, which were afterwards sold after his arrest, by his order;

5. Whereas it is proved that Don Julio Sanguiy was arrested in the house where he resided in this capital, at an early hour of the morning of February 24, viz, the same day on which the uprising took place;

6. Whereas it is proved that when Don José Inocencio Azcuy arrived in this port from Tampa he was arrested by an inspector of police, who took from him a document which he had hidden in his cravat, and that when the aforesaid Azcuy saw that he was discovered he snatched a part of said document out of the hands of the inspector and put it in his mouth for the purpose of destroying it, and that the inspector compelled him by force to spit out the pieces, and that the said document was written and signed by Don Julio Sanguiy, and contained an appointment as colonel in the insurgent army, with power to organize troops and to make appointments;

7. Whereas when the order to end the preliminary examination was confirmed, the previous session was held, and, in accordance with the request therein made by the Government attorney, an order was issued to quash the proceedings provisionally, one-half the costs to be paid by Don José Maria Aguirre, and the public trial of Don Julio Sanguiy was commenced;

8. Whereas the papers having been delivered to the Government attorney, that officer made an argument characterizing the acts as those of rebellion, provided for in article 237, No. 1, and punished in 238 of the penal code, and asked that Don Julio Sanguiy y Garit should be sentenced as guilty of the aforesaid crime to imprisonment for life, with the accessory penalties of article 33 of the code, and to the payment of one-half of the costs;

9. Whereas the counsel for the defense, in his turn, asked for the acquittal of the prisoner on the ground that there was no legal reason to suppose that his client had committed the acts attributed to him, and proposed as an alternative that his client should be pardoned on the ground that he was included in the proclamation published on the 27th day of February;

10. Whereas, the proofs offered by the Government attorney and the prisoner's counsel having been accepted, a day was appointed for holding the public trial, on which occasion they reiterated their previous arguments;

11. Whereas, according to article 8 of the civil code and article 41 of the law concerning foreigners, the penal laws are binding upon all persons living in Spanish territory, and as, consequently, the provisions of the penal code are applicable to Don Julio Sanguiy y Garit, since his American citizenship gives him only the rights granted by the protocol of January 12, 1877, which rights have been recognized;

12. Whereas, according to article 237, No. 1, of the penal code, persons who publicly rise in arms in open hostility to the Government in order to proclaim the independence of Cuba and Puerto Rico, or of either of them, are guilty of the crime of rebellion;

13. Whereas the acts declared to have been proved in the third "whereas" constitute the consummated crime defined in the twelfth "whereas," since the object and purpose of the rising which took place on the 24th of February is to secure the independence of this island;

14. Whereas, according to article 238 of the same code, persons who induce others to become rebels by promoting or sustaining the rebellion, and the principal leaders thereof, are to be punished by imprisonment for life;

15. Whereas the facts declared to have been proved in the second, third, fourth, and fifth "whereases," conclusively show that Don Julio Sanguiy y Garit was guilty, through direct participation of the crime defined in the thirteenth "whereas," and has rendered himself subject to the penalty provided for in the fourteenth, because not only was he one of the promoters of the rebellion but was also one of its leaders or principal chiefs, as has been shown to the satisfaction of the court, not only by the data in possession of the court and by the evidence taken at the public trial, but also by an examination and comparison of the documents connected with the third and sixth "whereases," in the undoubted handwriting of the prisoner (which examination it performed in fulfillment of the duty made obligatory upon it by article 726 of the law governing criminal trials), and, moreover, by the context of the letter addressed to Betancourt fifteen days before the uprising took place, and by the context of the document taken from Azcuy, inasmuch as appointments of that importance can be made only by the directors or principal leaders of the rebellion;

16. Whereas the fact that Don Julio Sanguiy was arrested on the morning of the very day on which the uprising took place does not authorize the court to consider him as guilty merely of a frustrated crime or attempt to commit rebellion, because from the letter and spirit of article 338 it is to be inferred that promoters of the rebellion are liable to the penalty therein provided, even though they are not at the head of any rebel bands or actually sustaining the rebellion, it being sufficient that they have promoted it, and because, it having been satisfactorily shown that Don

Julio Sanguiy was one of the principal leaders, it appears that he is certainly included in said article;

17. Whereas leaving out of consideration the fact that the alternative request made by the prisoner's counsel should have been made as an article of "previo pronunciamiento," in which case alone it could have been reproduced at the public trial, according to articles 666 and 678 of the law governing criminal trials, it is certain that the granting of that pardon does not come within the competency of this court, and that, on the hypothesis that the prisoner (although he was arrested three days before the publication of the captain-general's proclamation) was entitled to it, the granting of that pardon is wholly foreign to the existence of the crime of rebellion and may become a special case by itself, because, until its application, a crime exists which is punished by the code, and there are no subsequent legal circumstances that prevent its punishment, as was declared by the supreme court in its decision of July 16, 1873;

18. Whereas neither the Government attorney nor the counsel for the defense have pointed out any extenuating circumstances, and as none are to be deduced from the facts declared to have been proved, and as it is therefore proper to enforce the mildest penalty provided for the crime, viz, imprisonment for life;

19. Whereas there is no reason to enforce civil responsibility, and as the costs are understood to be required by law from those who are guilty of any crime:

Now, therefore, in view of the articles of the penal code which have already been quoted and also of articles 1, 11, 12, 26, 53, 62, 79, 89, and 741 of the law governing criminal trials, we pronounce sentence to the effect that it is our duty to condemn, and we hereby do condemn, Don Julio Sanguiy to imprisonment for life, with the accessories of being deprived of his civil rights and being subjected to the vigilance of the authorities during his lifetime; and in case the principal penalty be remitted we condemn him to absolute deprivation of his civil rights and to subjection to the vigilance of the authorities during his lifetime unless these penalties shall be remitted in the pardon; and we further condemn him to the payment of one half of the costs of the preliminary examination and to that of all those which have grown out of this case since the public trial was begun; and in view of the incident of seizure of property we declare Don Julio Sanguiy to be insolvent for the purposes of this case. Thus by this our sentence we do pronounce, order, and sign.

JOSÉ PULIDO.  
FRANCISCO PAMPILLÓN.  
VICENTE PARDO BONANZA.  
ADOLFO ASTUDILLO DE GUZMÁN.  
RAFAEL MAYDAGÁN.

The foregoing sentence was read and proclaimed by his honor the presiding judge of this court, Don José Pulido y Arroyo, in public session held this day; to which I certify.

MANUEL RAMÓN HERNÁNDEZ,  
*Acting Clerk of Court.*

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*Mr. Uhl to Mr. Williams.*

No. 1203.]

DECEMBER 7, 1895.

SIR: I inclose for your information a copy of a resolution of the United States Senate calling for all the correspondence relating to the arrest, trial, conviction, and sentence of Julio Sanguiy, and directing that a copy of the record of the trial be obtained.

You are instructed to obtain and forward to this Department as soon as practicable a certified copy of the record.

I am, etc.,

EDWIN F. UHL,  
*Assistant Secretary.*

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[Senate resolution, December 5, 1895.]

#### IMPRISONMENT OF GENERAL SANGUILY.

Mr. Call submitted the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved*, That the Secretary of State be directed to send to the Senate all correspondence relating to the trial, conviction, and sentence to hard labor for life of

General Sanguily, an American citizen, for alleged complicity in the war against Spain by the Cubans, and if no authentic record should be on file in the State Department, that the Secretary of State be directed to obtain a copy of the record of such trial.

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*Mr. Uhl to Mr. Williams.*

No. 1212.]

DECEMBER 23, 1895.

SIR: From your dispatch No. 2677, of the 7th instant, and from a letter, filed under date of the 13th instant from Mr. Julio Sanguily, the Department has learned the result, of the trial of Mr. Sanguily in the criminal court of Cuba. From these reports of the trial there is reason to apprehend that the proceedings which terminated in Mr. Sanguily's conviction were not in accordance with the treaty of 1795 as construed by the protocol of 1877. It is inferred from these reports that the civil court took up the case against Sanguily where the military tribunal left off, and that the trial proceeded upon the charges formulated and upon the evidence taken by the military court. It is necessary, before taking action, that the Department should be accurately and fully advised as to the manner in which the trial has been conducted with reference to the code of criminal procedure and to the provisions of the treaty and protocol. The position of this Government is outlined in a telegram to your office, date May 21, last, to which you are referred.

You are instructed to make this report with as little delay as possible, setting forth each step in the proceedings from the first arrest by the military authorities to the conviction in the civil court.

I am, etc.,

EDWIN F. UHL,  
*Assistant Secretary.*

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*Mr. Williams to Mr. Uhl.*

No. 2686.]

UNITED STATES CONSULATE,  
*Habana, December 24, 1895.*

SIR: With reference to previous correspondence relating to the arrest and trial of the American citizen Mr. Julio Sanguily for rebellion against the sovereignty of Spain in this island, I have now the honor to inclose a copy and translation of a communication received under date of the 8th ultimo from the chief justice of the royal audiencia of the province of Habana, asking for a literal copy of the formal protest I addressed the governor-general by order of the Department on the 25th of last April against all the proceedings that had been practiced then or that might be practiced in the future by the military jurisdiction in the trial of Sanguily, because, contrary to the provisions of the Collantes-Cushing protocol of the 12th of June, 1877, which requires that the above should be tried exclusively by the ordinary or civil jurisdiction.

I also inclose copy and translation of my answer to the chief justice, with which I accompany copy of my said protest. I sent a copy of this protest to the Department with my dispatch No. 2491, of the 25th of April last.

I am, etc.,

RAMON O. WILLIAMS.

[Inclosure 1 in No. 2686.—Translation.]

*Mr. Jose Pulido to Mr. Williams.*

HABANA, November 8, 1895.

*To the Consul-General of the United States:*

With reference to the cause proceeding from the court of the Cerro district, and instituted against D. Julio Sanguily on the charge of rebellion, the extraordinary section of the criminal hall, over which I have the honor to preside, begs you to please furnish it with a literal copy of your communication of the 25th of April last to the general government of this island, in which a protest was formulated by that consulate-general in connection with this case.

God guard you many years.

JOSE PULIDO.

[Inclosure 2 in No. 2686.—Translation.]

*Mr. Williams to Mr. Jose Pulido.*

UNITED STATES CONSULATE-GENERAL,  
Habana, November 12, 1895.

*To the President of the Superior Court of Habana:*

SIR: In answer to your attentive communication of the 8th instant, requesting that the criminal hall (sala de lo criminal) of your worthy presidency be furnished with a literal copy of the communication which by special order of my Government I addressed the Governor and Captain General of this island on the 25th of April last, I now have the honor to inclose literal copy of same.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

[Telegram.]

*Mr. Olney to Mr. Williams.*

DEPARTMENT OF STATE,  
Washington, January 6, 1896.

It is represented that volunteers demand the life of Sanguily. Make instant inquiry, and if apprehensions be grounded ask effective measures to uphold the law. Report the situation by telegraph.

[Telegram.]

*Mr. Williams to Mr. Olney.*

HABANA, January 7, 1896. (Received 3.16 p. m.)

I have made instant inquiry Governor-General. He replied there is not the least danger life Sanguily from the volunteers, who, perhaps, do not even think of him. He is detained in strong fort, comfortably lodged; is granted every consideration possible personally; is safe. For my part can see no grounds for apprehension.

[Telegram.]

*Mr. Uhl to Mr. Williams.*

DEPARTMENT OF STATE,  
Washington, January 23, 1896.

When may certified copy of record in Julio Sanguily's case be expected? Requested in my No. 1203, December 7 last.

[Telegram.]

*Mr. Williams to Mr. Uhl.*HABANA, *January 24, 1896.*

The superior court refuses to furnish a certified copy of the proceedings in the trial of Sanguily. I am translating the correspondence for transmission to you.

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[Telegram.]

*Mr. Uhl to Mr. Williams.*

DEPARTMENT OF STATE,  
*Washington, January 25, 1896.*

Apply for permission to examine and copy the record in Sanguily's case. If granted, have same copied and transmit here.

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*Mr. Williams to Mr. Uhl.*

No. 2756.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, February 6, 1896.*

SIR: In conformity with your instruction No. 1203, of the 7th of December last, directing me to obtain as soon as practicable a certified copy of the record of the trial of the American citizen, Mr. Julio Sanguily, I now beg to inclose for the information of the Department copies, with translations, of the correspondence had on the subject.

Inclosure No. 1 is a copy of my communication dated the 20th of December last, asking the president of the superior court of Habana to please order that a copy of the said record be furnished me for forwarding to the Department; and inclosure No. 2, of the same date, is the answer of the president, informing me that he had referred my communication to the third section of the hall for the trial of criminal cases; inclosure No. 3 is copy of my second communication, dated the 22d of the same month of December, to the president, asking him to please inform the aforementioned third section that the Government of the United States desired the authenticated copy of the record for the purpose of comparing and satisfying itself, in the exercise of its right as one of the two contracting parties, if the proceedings have been in accordance with article 7 of the treaty of the 27th of October, 1795, and the protocol construing it of the 12th of January, 1877; and inclosure No. 4 is copy of the answer of the court, dated the 27th of the same month, declining to furnish the desired copy of the record, on the ground of a lack of jurisdiction on its part and because of the case having been appealed to the supreme court at Madrid.

In view of this second refusal, I again addressed the president of the superior court, as shown by inclosure 5, on the 13th ultimo, asking to be informed of the facts with citation of the law upon which the judge of the civil jurisdiction founded the order of indictment and imprisonment of Mr. Sanguily, adding, if possible to obtain it, that the Government of the United States would be pleased if he would order a full and literal copy of the proceedings to be furnished it. This was answered on the following day, the 14th, by the president informing me that my note had been referred, like the others, to the same third section for its

action. And on 20th I received a reply saying that the aforesaid section had decided in conformity with the opinion of the prosecuting attorney, and for the same reasons expressed in its answer of the 27th of last December, that the court lacks jurisdiction to decide upon the petition made in my note of the 13th of January, by reason of it having submitted the appeal of Mr. Sanguily, now pending, to the supreme court against its decision.

Thereupon, not having been able to obtain from the superior court either a copy of the record of the trial or a statement of the facts with citation of the law upon which the judge of instruction of the Cerro district of this city had founded his order of indictment and imprisonment in the case, I then addressed, on the 24th of January, a note to Mr. Miguel F. Viondi, the advocate of Mr. Sanguily, asking him to please (1) inform me of the reasons upon which the order of indictment and imprisonment of Mr. Sanguily is founded, and also (2) if I could legally obtain an authenticated copy of the trial and of the said order of the indictment and imprisonment.

The answer of Mr. Viondi, dated January 25, 1896, is herewith accompanied as inclosure 9; and inclosure 10 is a translation of the order of indictment to which Mr. Viondi refers in his answer, as it appeared in *La Discusion* on the 1st of December last.

Again, on receiving your telegraphic instruction of the 25th ultimo, directing me to apply for permission to examine and copy the record, and, if granted, to have same copied for transmission to the Department, I addressed another note in this sense, on the same date, to the president of the superior court, a copy and translation of which is also accompanied herewith as inclosure No. 11. This note was acknowledged on the 27th ultimo, as per inclosure No. 12, and answered by his honor on the 4th instant, reiterating the refusal on the grounds of the lack of authority of the court in the matter, especially as Mr. Sanguily had appealed to the supreme court of Spain at Madrid, and because, as further affirmed, this consulate-general is neither a party to nor has any intervention in the case.

In brief, this correspondence shows—

First. That the superior court of Habana refuses, alleging the lack of jurisdiction therefor, and because the case has been appealed, to furnish a copy of the record in question for the information of the Government of the United States, the other party to the treaty of the 27th October, 1795, and of the protocol of the 12th January, 1877; postulating further that this consulate-general, from not being a party to the case, has no right of intervention in it.

Second. That the advocate for Mr. Sanguily, Mr. Viondi, is of the opinion that the court is authorized to furnish a copy of the record in this case in the same way as it is authorized, alike with other courts, to furnish copies and extracts of proceedings needed as evidence in other cases; also that the order of indictment and imprisonment issued by the civil judge has been based upon the proceedings of the court-martial.

It appears therefore that the proceedings had by the superior court of the said jurisdiction in the trial and condemnation of Sanguily are but the continuation of the proceedings initiated against him by the court-martial, against which this consulate-general protested before the Governor-General by order of the Department of State on the 25th of last April, copy of which protest is annexed herewith as inclosure 14.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 1 in No. 2756.—Translation.]

*Mr. Williams to Mr. Pulido.*UNITED STATES CONSULATE-GENERAL,  
*Habana, December 20, 1896. (1895?)*

EXCELLENCY: My Government being desirous of obtaining an authenticated copy of the record of the trial of Mr. Julio Sanguily, an American citizen, on the charge of rebellion, instructs me to ask for it; therefore I beg your excellency to please order that a copy be furnished me for the purpose aforesaid.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 2 in No. 2756.—Translation.]

*Mr. Pulido to Mr. Williams.*SUPERIOR COURT OF HABANA,  
OFFICE OF THE PRESIDENCY,  
*Habana, December 20, 1895.*

SIR: On acknowledging receipt of your attentive official letter of this date, in which you are pleased to ask for a certified copy of the proceedings in the trial of the American citizen, Mr. Julio Sanguily, on the charge of rebellion, for the purpose of giving an account of the same to the Government of your nation, I have the honor to inform you that this presidency has ordered its transfer to the third section of the hall for the trial of criminal cases of this court having cognizance of the case for the decision it may deem proper, signifying to you at the same time that the proceedings in the case have not terminated, since the appeal interposed by the accused to the supreme court for error of procedure and infraction of the law has yet to be heard.

JOSE PULIDO.

[Inclosure 3 in No. 2756.—Translation.]

*Mr. Williams to Mr. Pulido.*UNITED STATES CONSULATE-GENERAL,  
*Habana, December 23, 1895.*

EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's communication of the 20th instant, informing me that my solicitation had been referred for answer to the third section of that worthy court. I have now to beg your excellency to inform the section that my Government desires an authenticated copy of the record of the trial of Sanguily for the purpose of comparing and of satisfying itself, in the exercise of its right as one of the two contracting parties, if the proceedings have been in accordance with article 7 of the treaty of the 27th of October, 1795, and the protocol of the 12th of January, 1877, interpreting it.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 4 in No. 2756.—Translation.]

*Mr. Pulido to Mr. Williams.*HABANA, *December 27, 1895.*

SIR: Your attentive communication of the 20th and the 23d instants, soliciting a certified copy of the proceedings in the trial of Mr. Julio Sanguily, having been referred to the third section of the hall of criminal cases, the latter has dictated the following decree:

“HABANA, *December 26, 1895.*

“Whereas on the 2d instant sentence was declared in this cause condemning Mr. Julio Sanguily y Garit to perpetual imprisonment with chain and corresponding additional penalties and payment of costs as principal (autor) in the crime of rebellion;

“Whereas that on notifying the sentence to the solicitor of the prisoner he presented a writing interposing an appeal to the supreme court, founded on error of

procedure and on infraction of the law, and that the first of these resources was admitted, by the decree of the 16th instant, and the announcement of the second was acknowledged;

"Whereas the military judge of instruction in the cause against D. Jose Azcuy Miranda addressed a communication to the judge of the court of the Cerro district asking for the fragments of the appointment of colonel extended in favor of Azcuy now attached to these proceedings;

"Whereas the consul-general of the United States has solicited of the presidency of the court an authenticated copy of the cause, manifesting that the object proposed by his Government is to examine the proceedings thus far had by the court of instruction and by the superior court;

"Whereas the prosecuting attorney has reported in the sense that the hall lacks jurisdiction to decide upon the solicitation of the consul and that the petition of the judge of instruction encharged with the case against D. Jose Azcuy can not be acceded to for the reason that the process is not yet terminated, and because of the (expert) caligraphic examination of the document claimed is the subject of an appeal for error of procedure before the supreme court;

"Therefore, and regardless of the fact that this case is far from terminated, being at present subject to appeal upon alleged error of procedure, it is clear, the appeal having been admitted by this court, that this hall lacks jurisdiction to pass on the solicitation of the consul of the United States and that of the Captaincy-General in the communications already mentioned. Therefore, in conformity with the report of the prosecuting attorney, it is declared there is no reason for the remission of the copy of the record solicited by the consul of the United States, nor for the return of the document solicited by the Captaincy-General, and with the insertion of this decree it is ordered that the consul of the United States and the Captaincy-General be answered accordingly. It was ordered and signed by the judges of the hall, to which I certify.

"JOSE PULIDO.

"FRANCISCO PAMPILLON.

"FRANCISCO NOVAL Y MARTI.

MANUEL R. HERNANDEZ."

"By order:

And I have the honor to transmit the above to you in reply to your aforementioned communication.

JOSE PULIDO.

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[Inclosure 5 in No. 2756.—Translation.]

*Mr. Williams to Mr. Pulido.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, January 13, 1896.*

EXCELLENCY: By order and for the information of my Government, I beg your excellency to please inform me of the facts, with citation of the law, upon which the judge of the civil jurisdiction has founded the indictment and imprisonment of the American citizen Mr. Julio Sanguily; and, if possible, my Government will be pleased if your excellency would order a full and literal copy of the proceedings to be furnished for transmission to it.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 6 in No. 2756.—Translation.]

*Mr. Pulido to Mr. Williams.*

SUPERIOR COURT OF HABANA,  
OFFICE OF THE PRESIDENCY,  
*Habana, January 14, 1896.*

SIR: I have the honor to acknowledge the receipt of your attentive communication of the 13th instant, in which you ask to be informed of the facts and of the law upon which the indictment and commitment to prison of the American citizen, Mr. Julio Sanguily y Garit, are founded, manifesting to you at the same time that I have ordered a copy of your communication to be sent to the third section of the hall for the trial of criminal cases of this superior court for its action in the matter.

JOSE PULIDO.

[Inclosure 7 in No. 2756.—Translation.]

*Mr. Pampillon to Mr. Williams.*

SUPERIOR COURT OF HABANA,  
*Habana, January 20, 1896.*

SIR: Your communication of the 13th instant, soliciting to know the facts and the law upon which the indictment and order of imprisonment of Mr. Julio Sangui y Garit for rebellion are founded, having been referred to the third section of the hall for the trial of criminal cases, the latter has decided, in conformity with the prosecuting attorney and for the same reasons expressed in the answer of the 27th of last month, that it lacks jurisdiction to decide upon the petition you made in your said communication—that is, because of it having admitted the right of Mr. Julio Sangui to appeal to the supreme court against the sentence given in his case.

The above is hereby communicated for your information and other effects.

I am, etc.,

FRANCISCO PAMPILLON.

[Inclosure 8 in No. 2756.—Translation.]

*Mr. Williams to Mr. Vivondi.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, January 24, 1896.*

DEAR SIR: As you are the advocate of Mr. Julio Sangui, please inform me the reasons upon which are founded his indictment and imprisonment: and likewise, if I could legally, obtain a copy of the record of his trial, and of the order of the judge for his indictment and imprisonment.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

[Inclosure 9 in No. 2756.—Translation.]

*Mr. Vivondi to Mr. Williams.*

*HABANA, January 25, 1896.*

SIR: In your letter of yesterday you are pleased to ask me, as advocate that I am of Mr. Julio Sangui, the reasons upon which his imprisonment and trial are founded, and besides if legally you could, as consul of the United States, obtain copy of the record of his trial or of the order of his indictment and imprisonment.

To your first question I reply as follows: The proceedings had by the military jurisdiction having been remitted to the civil judge, in accordance with the protocol, the latter without taking any action appropriate to his jurisdiction dictated the order of indictment and of imprisonment.

On founding the indictment, as result of the facts, he affirms that the military jurisdiction has cognizance of the cause, and that it has remitted copy of the proceedings in order that the ordinary or civil courts take cognizance of the said crime so far as it relates to American citizens.

In declaring the legal grounds of the indictment, the civil judge declares that in the antecedents and other data that appear in the proceedings remitted to him by the court-martial there appear rational indications of criminality against Mr. Julio Sangui as responsible as principal (autor) of the crime of rebellion.

On this ground the civil judge founded his order for the indictment of Sangui. And in this same order he adds: "In view of the grounds of his indictment, and in consideration of the penalty that the law imposes on the crime in question, the provisional imprisonment of Mr. Julio Sangui is hereby ordered."

From the above statement you will see that the order of indictment and of imprisonment of Mr. Julio Sangui is founded solely, exclusively, on reasons that appear in the proceedings remitted to the civil court by the court-martial; that is, on what is prohibited by the protocol. In confirmation, I accompany a full copy of the order of indictment.

To your second question, that is, if you can, as consul-general, legally obtain copies of the record or of the order of indictment and of imprisonment, I have to say that you can legally obtain it. For although it is true that the defense of Sangui has presented an appeal, which has been accepted, to the supreme court at Madrid, it is only against the sentence; but the record of the trial has remained deposited in the superior court of Habana, and though the latter has no authority to alter, modify, transfer, etc., the proceedings had thus far in the case, still it has authority for the issuance of copies of the full, or of parts, of the proceedings. A certified copy of the

record has been transmitted to the supreme court, as I have informed you, but the original record remains in Habana. Therefore, if you, in Habana, in representation of your nation, should solicit a copy of it for your Government, in order that it may see if the protocol has been faithfully observed, this could not in justice be refused you; likewise, a copy of it should not be refused for the direct inspection of your Government.

This is not a question of jurisdiction. It would be so were you to propose some modification of the record. Then the court would tell you, with reason on its part, that it has no jurisdiction, because it would be a matter for the decision of the supreme court at Madrid.

But to see what has been done by the superior court of the province of Habana is in nowise opposed to its jurisdiction.

You ask for a copy of what already exists, and if the original from which the copy is to be taken, to which your Government has the right under the protocol, is in the archives of the superior court of Habana, the latter ought to issue the copy solicited, because solely it has jurisdiction in the case, and because it alone, and not the supreme court at Madrid, has possession of the record. The superior court of Habana is authorized not to permit any change or modification tending to alter the sense of the record, but not to prevent the seeing of what has been done by the same court or by the judge of instruction. If you, with or without a copy, should solicit anything which would change the face of the record, then the superior court of Habana could tell you that it has no authority or jurisdiction to grant your request, since its mission had terminated. But with jurisdiction or without it the court can legally order the issuance of a copy to you of the record as it now exists, for this in nowise changes the proceedings as realized; neither is there any law prohibiting the court to comply with such a request, and the following example confirms it: Suppose that in a suit carried on in a court of first instance, or in the superior court itself, one of the parties in the suit should ask for a copy of an original document in the case against Sanguiely. The judge of first instance would at once send a communication to the superior court soliciting the copy, which with all certainty would be furnished by the superior court, since such act in nowise changes the state of the record, the only thing that is forbidden. Therefore, if this is true, the same applies to the case about which you consult me. For this copy does not change the record nor alter the state of the cause, for you limit yourself to the ascertaining and to the knowing, as representative of your nation, as contracting party with Spain, by the treaty, of what has been done in the trial. Were it not as I inform you, neither would you be allowed to see the record of the trial of Sanguiely. For the copy that you ask for only signifies the wish of your Government to see the record, and not being able to do this, practically, it demands a copy of it to realize its just desire.

In fine, the issuance of copies of what has been done in a suit is not opposed to the fact of appeal to the supreme court because the copy given does not in any manner affect the state of the cause.

Therefore, I believe you can legally solicit a copy of the record or of the indictment without the superior court of Habana having to refuse it, because the point does in nowise lessen the jurisdiction of the supreme court. There is no existing law prohibiting the furnishing of such copies by the superior court. Your second question is herewith answered.

I am, etc.,

MIGUEL FRANCISCO VIONDI.

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[Inclosure 10 in No. 2756.—Translation.]

#### ORDER OF INDICTMENT.

Acknowledging the receipt of the proceedings sent by the senior judge of this cause, and in view of the reasons stated in the opinion of his honor the judge-advocate (auditor de guerra), on folio 55 and over, the cognizance of the same is accepted in what refers to American citizens; and to this effect let these proceedings be filed in the corresponding book, with notification of the acceptance and of the initiation of the cause to the hall for the trial of criminal cases and to His Majesty's prosecuting attorney.

Whereas, on the morning of the 24th of February last, by reason of antecedents and of information furnished by the secret service, the arrest was made on executive order of several individuals seriously compromised in an intended separatist movement, and a party having, on the morning of the same day, risen in open rebellion outside of this province under the cry of independence, and of which cause the military jurisdiction is taking cognizance, and has remitted the certified copy of the proceedings for the cognizance of the ordinary courts in the said crime in whatever therein relates to American citizens:

Therefore, considering that these acts are invested with the character of the crime of rebellion defined in article 237 of the criminal code, and that from the antecedents

and facts stated in the proceedings remitted by the said military jurisdiction there appear national indications of criminality against Mr. Julio Sanguily y Garit and Mr. José Maria Aguirre y Valdés as responsible of the said crime as principals (autores)—

In view of articles 384 and 503 of the law of criminal procedure his honor said he ought to order and did order the indictment of the said Mr. Julio Sanguily y Garit and Mr. José Maria Aguirre y Valdés, and that the accused be heard in all the successive steps of the trial.

In accordance with the grounds of the indictment, and in consideration of the penalty which the law imposes on the crime in question, the provisional imprisonment is ordered with outside intercourse of the said Mr. Julio Sanguily y Garit and Mr. José Maria Aguirre y Valdés, informing them thereof, and issuing the corresponding writs to the chiefs of the penal establishments where they are, and if this order does not appear in the proceedings let an attentive communication be addressed to the Captain-General asking him to please issue the necessary instructions placing the accused as prisoners at the disposal of this court and the results of this examination, informing the accused of the right the law grants them to ask for the reconsideration of this order within the legal term, and for the appointment at once of advocates and solicitors for their defense in this cause, of which timely account must be given by the acting judge. Require the accused to give security for 50,000 pesetas each, for the purpose of securing their pecuniary responsibility against the amounts that in due season may be decided against them, and in case of their failure to give security their property must be attached therefor in legal form. Bring to the proceedings the penal and carceral antecedents, and this done, give account for the ordering of whatever may be required hereto.

Ordered and signed by the judge of instruction of the Cerro district. I attest.

EUGENE LUZZARRETA.

ANTONIO ALVAREZ INSUA.

[Inclosure 11 in No. 2756.—Translation.]

*Mr. Williams to Mr. Pulido.*

UNITED STATES CONSULATE-GENERAL,  
Habana, January 25, 1896.

EXCELLENCY: Having communicated to my Government the order of the third section of that worthy court in regard to the copy of the trial of the American citizen Mr. Julio Sanguily, I have received to-day a telegram from the Department of State of the United States ordering me to ask permission of your excellency to examine the cause and take a copy of it for its information.

And in obedience to the order of my Government, I beg your excellency to please order that I be allowed to examine said cause and take a copy of it for the purpose indicated.

I am, etc.,

RAMON O. WILLIAMS.

Consul-General.

[Inclosure 12 in No. 2756.—Translation.]

*Mr. Pulido to Mr. Williams.*

SIR: On acknowledging receipt of your attentive official letter of the 25th instant, in which you are pleased to ask of this presidency to be authorized to examine and take copy of the proceedings in the trial of the American citizen, Mr. Julio Sanguily, as ordered in a telegram sent you by the Department of State of the Government of your nation, I have the honor to inform you that I have referred the same under this date to the third section of the hall for the trial of criminal cases of this superior court having cognizance of this case for the reply that it may deem proper.

JOSE PULIDO.

[Inclosure 13 in No. 2756.—Translation.]

*Mr. Pulido to Mr. Williams.*

HABANA, January 4, 1896.

SIR: The first section of the hall for the trial of criminal cases of this superior court informs this presidency as follows:

"The first section of the hall for the trial of criminal causes, over which I have the honor to preside, has agreed, in conformity with the solicitation of the prosecuting attorney, that there is no reason for the granting of permission to the consul general of the United States for the examination of the record in the trial of Mr. Julio Sanguily for rebellion, and that the communication of your honor, dated the

27th ultimo, to be answered in this sense, with insertion of the opinion of the prosecuting attorney, which reads as follows:

*"To the Hall:*

"The prosecuting attorney says that the consul of the United States in a communication addressed to his honor the president of the court under date of the 25th instant solicits from the hall, by order of his Government, permission to personally examine the record of the trial of Mr. Julio Sanguiely y Garit for rebellion, and for the taking of a copy of the same for transmission to his Government. In reality this petition is identical to the one formulated by the same consul on the 23d of December last, and upon which the opinion of this office was given on the next day with the order of the 26th of the same month, solely with the difference that the copy then asked of the record was to be given by the court and now that its consent is asked for the consulate to make the copy; and in the opinion of the prosecuting attorney, as he then expressed, the hall lacks authority to furnish the copy or to deliver a record of proceedings to anyone not a party thereto or having intervention therein. At all times it would be impossible to accede to such a pretension, but now the more so because of the jurisdiction of the court over the proceedings having ceased by reason of the same having been appealed to the supreme court, as also expressed in the aforesaid order of the 26th of December last. For those reasons the prosecuting attorney is of the opinion that the hall should dismiss the new pretension formulated by the consul of the United States. The hall will decide.

"ENJUTO,  
"Prosecuting Attorney.

"The above is herewith referred to your honor for the corresponding effects."  
Therefore, I have the honor to transmit you the preceding in answer to your attentive official note of the 25th of last month.

JOSE PULIDO.

[Inclosure 14 in No. 2756.]

*Mr. Williams to the General in Charge.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, April 25, 1895.*

GENERAL: Notwithstanding the decree issued on the 16th of March last by his excellency the Governor-General of this island, inhibiting the military jurisdiction of the cognizance of the case of the American citizen, Mr. Julio Sanguiely, and ordering its transfer to a court of the civil jurisdiction in strict observance of the agreement of the 12th of January, 1877, nevertheless, I am informed by his advocate that he has again been subjected to a court martial, by order of the military jurisdiction, this time on a charge alleged to be related to the kidnaping last year of Mr. Fernandez de Castro; and in consequence this American citizen has been again remanded into solitary confinement and deprived of all intercourse with his counselor by order of the court-martial.

This proceeding on the part of the military jurisdiction is not only an inraction on the agreement, but it is likewise a contradiction of the said decree of the 16th of March last of his excellency the Governor-General of this island.

I have, therefore, and in compliance with the instructions of my Government, to ask your excellency to have the goodness to order that this second case against this American citizen be also transferred to the civil jurisdiction for trial, as his excellency the Governor-General was pleased to order in the first case; and also by order of my Government to enter its most formal protest before the Government of this island against any delay in the transferring of this second case against Sanguiely to the civil jurisdiction; as likewise to protest against all proceedings hitherto practiced, or that may hereafter be practiced, in this case by the court-martial now trying this American citizen, because they are in clear contradiction of the said agreement between the two nations.

I have, etc.,

RAMON O. WILLIAMS,  
Consul-General.

*Mr. Rockhill to Mr. Williams.*

No. 1265.]

DEPARTMENT OF STATE,  
*Washington, February 20, 1896.*

SIR: I have received your dispatch No. 2756, of the 6th instant, relative to your inability to obtain a certified copy of the record of the trial of Mr. Julio Sanguiely.

S. Doc. 231, pt 3—20

In reply you are informed that our minister at Madrid was instructed by telegraph on the 18th instant to ask the Royal Government for a copy of the record referred to.

I am, etc.,

W. W. ROCKHILL,  
*Assistant Secretary of State.*

*Mr. Rockhill to Mr. Williams.*

No. 1273.]

DEPARTMENT OF STATE,  
*Washington, February 28, 1896.*

SIR: Referring further to the case of Julio Sanguily, I inclose for your information translation of a letter addressed to this Department by his brother, Manuel Sanguily, of Brooklyn, N. Y., in relation to current rumors that the prisoner's life is in danger. It seems proper to thus apprise you of the apprehension felt by Mr. Sanguily's friends and to call upon you for a report in regard to his treatment in prison.

I am, etc.,

W. W. ROCKHILL,  
*Assistant Secretary.*

[Telegram.]

*Mr. Rockhill to Mr. Williams.*

DEPARTMENT OF STATE,  
*Washington, February 28, 1896.*

Cable as to health and welfare Sanguily. His friends apprehensive.

[Telegram.]

*Mr. Williams to Mr. Rockhill.*

HABANA, *March 2, 1896.* (Received 3.15 p. m.)

Accompanied by Dr. Burgess, I passed an hour yesterday at the fort with Sanguily, finding him cheerful and very content with his treatment and not wishing to change quarters, and desiring his friends to be informed that, while longing for his freedom, he entertains no apprehension for his personal safety. Dr. Burgess reports to me officially that from examination of his circulation, temperature, and tongue, as also from his own statements, that his physical condition and health are good, with exception of some rheumatism, seemed to be of the muscular variety.

*Mr. Williams to Mr. Rockhill.*

No. 2809.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 7, 1896.*

SIR: I have the honor to acknowledge the receipt of your instruction No. 1273, of the 28th ultimo, in relation to the current rumors purporting that the life of Mr. Julio Sanguily is in danger, and inclosing a copy of

a letter of his brother, Mr. Manuel Sanguily. In reply I beg to confirm my telegram addressed to you on the 2d instant, and now present in addition the following remarks:

On the day and the moment of the receipt of your telegram of the 28th ultimo (Friday) a violent storm prevailed, and that on Saturday, the 29th, we had to dispatch the consular business of two steamers for the United States. These circumstances prevented me from going to Fort Cabañas, where Mr. Julio Sanguily is confined, till Saturday, the 1st instant, and the next day I sent you a telegraphic report of the facts as I ascertained them in conversation with him. I have also to add that his quarters are such as are furnished there to the army officers, and are occupied by himself and his son who keeps him company, the latter freely going and coming. His treatment in this respect is exceptionally good, for each of the adjoining rooms is occupied by several persons. The commander of the fort, General Suero, makes frequent friendly visits to him. And lastly, he not only said that he had no apprehension for his personal safety, but he expressed himself as fully appreciative of the kind treatment given him by the authorities.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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*Mr. Williams to Mr. Rockhill.*

No. 2812.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 10, 1896. (Received March 14.)*

SIR: I have the honor to submit a translation and copy of a letter addressed to me on the 6th instant by Mr. Miguel Francisco Viondi, advocate, memorial, and other documents pertaining to the cause of Mr. Julio Sanguily, which I forward herewith to the Department, in compliance with the desire of this gentleman.

Respecting that part of Mr. Viondi's letter telling me that Mr. Sanguily also encharges him to ask me to inform the Department as to the certainty of the facts related by him—that is, regarding (1) the law of 1821 in its application to his cause and (2) of its inobservance in the procedure under which he has been tried by the courts of Habana—I have to say that this office being purely consular or commercial, and not judicial, it seems as out of place for it to analyze the proceedings of those courts, and the more especially since the Department has its own law officer in the person of its solicitor, with the right, furthermore, to consult the Department of Justice, and to each of whom the facts of the case can be referred should the honorable Secretary of State or his assistant so desire it.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Inclosure 1 in No. 2812.—Translation.]

*Mr. Viondi to Mr. Williams.*

HABANA, March 6, 1896.

DEAR SIR: My client, Mr. Julio Sanguily, has sent me to-day the accompanying protest, memorial, and documents for delivery to you, with the request that you have the goodness to forward them to the Department of State.

He encharges me also to ask you to inform the said Department as to the certainty

of the facts related—that is, first, in regard to the law of 1821, and, second, of the fact of that law not having been observed in his trial, as agreed between the United States and Spain under the protocol of 1877, but that instead he has been judged according to the law of oral trial of the year 1889.

As the advocate of Mr. Sanguiily, I assure you that the protocol has not been complied with in his trial, since he has not been tried in accordance with the law of 1821.

Mr. Sanguiily recommends me especially to say to you that, in his opinion, the fact of this violation constitutes the real reason for which the superior court of Habana founded its refusal to furnish you with a copy of the record of his trial.

With expressions of the most distinguished consideration, etc.

MIGUEL FRANCISCO VIONDI.

[Inclosure 2 in No. 2812.]

*Mr. Sanguiily to Mr. Williams.*

SIR: I, Julio Sanguiily, imprisoned in the Cabaña Fortress for the supposed offenses of rebellion and kidnaping, appear before you to protest of the unjust imprisonment suffered and the concluded violation, victim in both charges.

In the first I have been sentenced by only five judges. Have been indicted and put in prison by virtue of a warrant founded in the circumstantial evidence of the process originated before the military jurisdiction.

Besides, I have been subjected to a new trial by the civil authority, which is not in accordance of the protocol of 1877.

According to that protocol the law of procedure that has to be applied to the citizens of the United States is the one of April 17, 1821.

That law directs from articles 19 to 23 an especial procedure, by virtue of which every act of the process must be with the consent of the defendant's counsel. Article 23 says that the witnesses must testify in the presence of the defendant and his counsel.

Article 24 says the presiding judge must pronounce sentence.

Article 25 says that after sentence has been pronounced the case must be carried to the (audiencia) and the parties to be heard there again (article 28) pronouncing definite sentence within the third day by six judges.

Laying aside the warrant of process and imprisonment founded in the facts of the case originated before the military jurisdiction, the undersigned could never have been tried by oral process, because the protocol of 1877 objects to it, and says that the citizens of the United States can not be tried only by the law of April 17, 1821, with entire publicity regarding the witnesses, who have to testify in the presence of the defendant's counsel, who can make any remarks he may deem necessary, first pronouncing sentence by the judge, and then with new proof by the audiencia, and that composed of six judges (article 27).

The exponent has had only one sentence, by virtue of a law that is not applied, and that sentence has been pronounced by the audiencia, composed of five judges, sentencing to perpetual chain.

Article 2 of the protocol has reference to the law of April 17, 1821, and also articles 4 and 5, all in reference to the citizens of the United States.

Such is the law in force regarding citizens of the United States. And the general consulate objected against military jurisdiction, the one subjected by the exponent. The Captain-General acceded to the demand of the general consulate by merits directed in article 1 of said protocol.

Though another Spanish law may have been promulgated following that of 1821, it is not possible to lay aside without the accord and consent of the United States of the one particularly determined in the protocol, i. e., the citizens of the United States must be tried by the law of April 17, 1821, more advantageous than by secret process, by which the Spanish subjects are subjected to.

The law of 1821 also demands proofs in order to convict, and the Spanish law in force, or say that one of the oral process, authorizes the laying aside of the proofs and the conviction or discharge, only in conscience of the judges. And the conscience of the judges of the Spanish tribunal toward the undersigned is not a guaranty sufficiently impartial, taking into consideration the political offense and the important part taken by the undersigned in the last war.

In the case of kidnaping, as in the previous one, the protocol and law of April 17, 1821, is not applied and is substituted by the oral process.

The exponent has not consented to the law that has been applied—

In the first place, because the treaty has a public character and can not be renounced individually; in the second place, because it designates an obligation of the Spanish Government which has to be fulfilled; in the third place, because, as it appears in this case, did not know the existence of a law that favored me so much, an ignorance

that can not be imputable to the Spanish authorities, necessarily cognizant of the treaty, which did not wish to apply in prejudice to a citizen of the United States; in the fourth place, because the Spanish criminal law, in article 8, declares that the criminal jurisdiction can never be prorogued.

Then it can not be said that the undersigned has been submitted to a criminal jurisdiction, which does not belong to him, proroguing to that jurisdiction his own.

The undersigned does solemnly swear, in the name of the Almighty God, that, until now, did not know the existence of the law of 1821, and being imprisoned since February 24, 1895, and sentenced in one of the cases, by virtue of a law which is not submitted, but excluded by the protocol of 1877, appears before his consul with the present protest, against the arbitrary and violation of the law of which is a victim, that through the representative of his nation may be elevated to the United States Government, so that it may obtain the immediate liberty of one who is suffering imprisonment illegally and has already been sentenced unjustly, and besides that I demand from the Spanish Government an indemnity in the sum of \$500,000, damages caused by the said Government in depriving me of my liberty arbitrarily decreeted and against the solemn law of treaties.

At the date of this protest and claims of damages the undersigned has already suffered one year and eleven days of illegal imprisonment in a fortress.

So the United States Government can not consent that, contrary to the expressed laws, a citizen of his nation be deprived in such a manner of his own liberty by a foreign Government.

JULIO SANGUILY.

CABAÑAS FORTRESS, March 6, 1896.

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*Memoir presented to the United States Government by Julio Sanguily, a citizen of same, demanding his liberty and indemnity of the Spanish Government for reason of the unjust imprisonment of which he is the victim.*

The treaties and protocols in force between the United States of America and Spain relating to its citizens and subjects are laws.

The first treaty in the chronological order is that of 1795. That treaty was ratified in 1819 for another one, with exception of articles 2, 3, 4, and 21 and the second clause of the twenty-second.

The seventh clause of the treaty of 1795 remained, therefore, in force. Said clause says: "That the citizens of the United States shall be granted free access to all judicial procedures and to be present at all hearings and examinations relating to same."

As that clause was not sufficiently clear, several conferences were had between the minister plenipotentiary of the United States at Madrid and the minister of state of His Majesty the King of Spain, agreeing definitely in 1877 to sign on the 12th of January of said year the protocol, which, according to its preamble, has for its object the following: "To terminate amicably all controversy as to the effect of existing treaties in certain matters of judicial procedure and to make declaration on both sides as to the understanding of the two Governments in the premises and respecting the true application of said treaties."

That protocol has been signed by the Hon. Caleb Cushing, for the United States, and by His Excellency Señor Dn. Fernando Calderon y Collantes, minister of state of the Spanish Government. The president of the cabinet, His Excellency Señor Dn. Antonio Canovas del Castillo, confirming same and communicating it to the governor and captain-general of Cuba through a royal order.

Said protocol ends with the following words: "In order to give the Government of the United States the completed security and good faith of His Majesty's Government in the premises, command will be given by royal order for the strict observance of the terms of the present protocol in all the dominions of Spain, and specially in the island of Cuba."

The exponent was indicted by military jurisdiction in two cases—one for the rebellion and the other for kidnaping. The consul-general of the United States demanded immediately of the Spanish authorities, and referring to article 1 of the protocol of January 12, 1877. The Spanish authorities, recognizing the justice of that demand, consented that the case would pass to the civil jurisdiction.

This action of the Spanish Government in the island of Cuba proves that they recognize the protocol, because the first of its clauses was fulfilled. But the Spanish Government has not recognized all the other clauses of the protocol, having violated them, and the exponent goes to prove it.

All the protocol is united to the law of April 17, 1821. That law has never been applied to Spanish subjects in the island of Cuba. It is an especial law of Spain, and if it was published in Cuba in *El Diario del Gobierno Constitucional de la*

Habana, dated July 10, 1821, was a new reference; and so it is that article 37 of same declares that the dispositions of that law as understood are limited to provinces of Spain and adjacent islands.

The mentioned law of April 17, 1821, was never a law in Cuba for the Spanish subjects. But the Spanish minister by common consent with that of the United States having selected it exceptionally, to proceed and resolve only when concerning to citizens of the United States.

In accordance with the treaties, the citizens of the United States condemned by the Spanish authorities in criminal cases must be subjected to the especial law exclusive of any other law.

Examining now the protocol of 1877, said protocol having been fulfilled by the Spanish Government only in the first clause. Article 2 refers to those who may be arrested or imprisoned by order of the civil authority for the effects of the law of April 17, 1821.

Article 3 refers to those who may be taken with arms in hand, mentions as law for the citizens of the United States, adding: "In conformity with the provisions of articles 20 to 31 of the same law."

Those articles from 20 to 31 direct that the trial must be public, the witnesses testify in public in the presence of the accused or counsel; that the counsel or the accused can make observations or examine the witnesses; that after the evidence the counsel may expose to the judge all he may deem convenient to his client, and after the counsel has been heard the judge may pronounce sentence.

The sentence pronounced by the ordinary judge shall be referred to the *audiencia* of the judicial district in accordance to article 5 of the protocol, referring again to the law of April 17, 1821, and before the *audiencia*, according to this law, the citizens of the United States can present new evidence, and his counsel speaking afterwards the *audiencia* composed of six judges, among them necessarily the president, shall pronounce sentence lastly.

The law of April 17, 1821, which the protocol guarantees, has not been conceded to the exponent and has been condemned by another law, in which the process has been secret, the witnesses have not testified in the presence of the accused or his counsel and has been subjected to oral process, where there is only one sentence, having been pronounced by five judges and not by six as the law of April 17, 1821, requires.

Has already been condemned in one of the cases and the other is being finished in the same manner.

Besides, in the oral process, conviction can be agreed without process at the conscience of the judges, and the law of April 17, 1821, says, "That the crime charged in the indictment must be fully proved."

The exponent is suffering imprisonment in a military fortress nearly twelve months, for reason of a law not included in his case, therefore violating the agreement of the treaty, or protocol.

Moreover the imprisonment is founded in the facts and antecedents instituted in the case by the military jurisdiction, where the cases were initiated.

In the protest accompanied with this exposition swore in the name of Almighty God not to know the law of April 17, 1821, a law that protected him so much, and now repeats the same solemn oath. Therefore invokes in the name of justice that the liberty taken from him so arbitrarily be restored immediately.

Besides the damages caused by the privation of his liberty, add the injury caused his honor, charging him with the infamous crime of kidnaping, a charge of which he is entirely innocent; and said charge had been published in the newspapers on several occasions.

The two newspapers inclosed, *La Lucha* and *Diario de la Marina*, having the largest circulation in Cuba, published to the injury of the exponent his complicity in the case of kidnaping, instituted against him by the mystery of a secret process.

The imprisonment and the case of kidnaping have been realized, applying to him a law of which he was excepted by virtue of a treaty between the United States and Spain.

How much is the damages value?

The nation that breaks a treaty to imprison conveniently a foreign subject exempted by a law of said treaty and subjects him to an inquisitorial proceeding by which he is dishonored through the infamous and repugnant nature of the crime charged him, such nation is obliged to pay the damages occasioned so arbitrarily.

The exponent estimates the damages caused by privation of his liberty and his honor, the two most valued treasures of the human being, in the sum of \$500,000.

It must be taken also into consideration that the exponent, besides suffering imprisonment since February 24 of last year, has been incommunicated during twelve days, thus separated from his family and the world; that cruel and arbitrary incommunication was not even ordered by the civil authority, but by the military jurisdiction, an authority twice unqualified—first, because it was a military authority prohibited

by the treaty, and, second, because the incommunication was effected contrary to the law of 1821.

The inclosed copy of protest of the consul-general of the United States, dated April 5, 1895, confirms the above fact.

From the prison he claims justice from the Government of his nation and invokes in the name of said justice and the law of treaties to demand of the Spanish Government his immediate liberty and also the immediate payment of the indemnity lawfully claimed.

In order that the Government of the United States may have full knowledge of the case, inclosed is copy in Spanish of the law of April 17, 1821, also copy in English of the Cushing-Collantes protocol, which refers to the former law.

Confirming the facts mentioned in the protest and memoir, the Spanish tribunal that passed the sentence for rebellion did not consent to send to the United States Government authenticated copy of the process and imprisonment, refusing previously that the consul-general of the United States should examine the case; and that opposition of the Spanish authorities was because they did not wish that the United States Government should be aware of how the treaty of 1877 had been violated, not having observed the procedure of the law of April, 1821, notwithstanding the cases against the accused had been transferred to the ordinary tribunal, that in the procedure the rules of the treaty should be observed.

And it can not be any other reason founded by the refusal of the judicial authorities that the United States Government should see the cases mentioned.

There can not be any ignorance alleged on the part of the Spanish tribunal.

No tribunal ignores the laws of its country; therefore everything has been the work of bad faith.

JULIO SANGUILY.

HABANA, March 6, 1896.

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*Mr. Williams to Mr. Rockhill.*

No. 2847.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, March 30, 1896.*

SIR: I have the honor to report to the Department, on information received from Mr. Viondi, the advocate, that the military court having under its investigation the charges against Mr. Julio Sanguilý and some twenty others for participation in the kidnaping of Mr. Antonio Fernandez de Castro by the bandit Manuel Garcia on his plantation near the towns of Bainoa and Aguacate in the year 1894, has quashed all these cases. They are still pending, however, before the civil court.

I am, etc.,

RAMON O. WILLIAMS,  
*Consul-General.*

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[Telegram.]

*Mr. Williams to Mr. Rockhill.*

HABANA, April 24, 1896. (Received 4.50 p. m.)

Superior court yesterday quashed charges against Sanguilý of being concerned in kidnaping Fernandez Castro.

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*Mr. Rockhill to Mr. Lee.*

No. 13.]

DEPARTMENT OF STATE.  
*Washington, June 18, 1896.*

SIR: The Department being informed that General Suero has been relieved of the command of the Habana fortress, you are instructed to ascertain and report upon the condition of the health and welfare under

the new prison management of Julio Sanguily, the citizen of the United States who is at present confined therein, as his relatives in this country are apprehensive that the change in question may be injurious to him, especially as it is reported that Mr. Sanguily's counsel at Habana has been ordered to close his office and advised to leave the island to avoid expulsion.

I am, etc.,

W. W. ROCKHILL,  
*Assistant Secretary.*

*Mr. Lee to Mr. Rockhill.*

No. 20.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, June 30, 1896.*

SIR: I have the honor to inform the Department that in compliance with instruction No. 13, dated the 18th instant, to ascertain and report upon the health and welfare of Mr. Julio Sanguily, an American citizen confined in the Cabaña fortress, I addressed, on the 25th instant, a communication to the governor and captain-general, asking to be informed in which manner I should be permitted to carry out this instruction of my Government, and also therein touched upon the point of Sanguily's release upon condition of leaving the island.

His excellency has replied that the prisoner is in good health, and that I may visit him, or any other American prisoner under confinement, by giving one day's notice beforehand, so that the prisoner may be in the guardroom nearest to the entrance of the fortress at the time of my visit, which, it is expected, will be 8 a. m.

With respect to Sanguily's release, his excellency states that he has no authority in the matter, as Sanguily is now exclusively subject to the ordinary or civil jurisdiction. I accompany a copy translation of said communication.

I am informed that there is no truth in the report that Mr. Viondi, Sanguily's counsel, has been ordered to close his office and advised to leave Cuba to avoid expulsion.

I learn from Mr. Viondi that he saw Sanguily last Saturday, and that with the exception of some rheumatism in the shoulder, to which he is subject, his health is good and surroundings comfortable under the circumstances.

I am, etc.,

FITZHUGH LEE,  
*Consul-General.*

[Inclosure 1 with No. 20—Translation.]

*The Captain-General of Cuba to Mr. Lee.*

ARMY OF THE ISLAND OF CUBA,  
CAPTAINCY-GENERAL, OFFICE OF THE STAFF,  
*Habana, June 28, 1896.*

*To the Consul-General of the United States of America.*

SIR: I have received your communication of the 25th instant, in which, upon informing me that your Government instructs you to ascertain the condition, health, and welfare of the American citizen Mr. Julio Sanguily, imprisoned at the fortress Cabaña, you request me to indicate the form of complying with said instructions; and in answer it affords me pleasure to say that I have no notice that any alteration has taken place in the health of the prisoner, because were it so, and notwithstanding he is at the disposal of the ordinary jurisdiction, he would have been transferred to the military hospital of this capital. However, if you desire to make personally

the investigation referred to, you may call at the above-mentioned fortress for that purpose, notifying the day beforehand this Captaincy-General or the general governor of the fortress direct, so as to order in advance that the prisoner be at the guard-room nearest to the entrance of said fortress, for the object indicated, at 8 a. m., of the day you may appoint, the same form to be practiced whenever you may wish to visit the aforesaid prisoner, or any other American citizen, provided he is not incommunicated (*incomunicado*).

With reference to the indication of pardon or release expressed in your communication, I have to inform you, supposing exact the statements contained in the note inclosed therein, that from the moment that, in consequence of the agreement made between Spain and the United States by the protocol of the 12th of January, 1877, the trial of Sanguily was transferred to the ordinary jurisdiction from that of war the latter ceased to depend on my authority and he remained exclusively subject to the ordinary courts, which, as I understand, have already dictated a condemnatory sentence; for which reason it is not within my power to determine absolutely anything regarding the pardon or release of the American citizen in question.

God guard you many years.

VALERIANO WEYLER.

*Mr. Lee to Mr. Rockhill.*

No. 152.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, September 30, 1896.*

SIR: I have the honor to transmit herewith copy of a letter received from Mr. Julio Sanguily, who is still confined in the Cabañas fort.

He seems to be under the impression that this consulate-general should have insisted before the Spanish authorities for his release or pardon under the terms of General Calleja's proclamation of amnesty. This proclamation was dated the 27th February, and its third article offered amnesty (*indulto*) to all who should surrender within eight days after its promulgation. Sanguily was arrested on the 24th February at his home in this city.

I also transmit a copy of my answer to Mr. Sanguily's letter, informing him that, in the absence of any special instructions, this office had no further intervention in his case, but that I would forward a copy of his letter to the Department of State.

I am, etc.,

FITZHUGH LEE,  
*Consul-General.*

[Inclosure 1 with No. 152.]

*Mr. Sanguily to Mr. Lee.*

CABAÑAS FORTRESS, *September 23, 1896.*

Hon. Gen. FITZHUGH LEE,

*Consul-General of the United States of America at Habana.*

DEAR SIR: When some time ago I had the pleasure of receiving your courteous visit in this fortress I had the honor of informing you that my case, legally considered, was comprised in the amnesty decreed by General Calleja, as I was arrested at my home on the morning of the 24th of February—that is, on the very day the revolution commenced in this island, and I was immediately after prosecuted.

General Calleja's amnesty comprehended all the revolutionists who would present themselves within eight days following the promulgation; therefore, if the *indulto* is applicable to those who actually revolted in arms, with regard to those who did not it is of more immediate application because what covers the greater covers the least.

In consideration of your intelligence and energy, I expected you would have negotiated for my liberation with the Captain-General upon that basis, which is

strictly just; that you would have asked him to apply in my case the general disposition which referred to the revolutionists in arms who would surrender to the authorities on the grounds stated before, viz, that I did less than they, not having arisen in arms, but having been arrested in my house before the execution of any hostile act.

I have waited for a word from you kindly informing me of your efforts in my behalf; and, as you have notified me nothing, I venture to trouble you, requesting, as my right of freedom is evident according to the terms of the indulto, that you insist with the Spanish authorities that I be reinstated in the liberty I have been deprived of, against which act the very text of the amnesty protests.

With the right on your side, there is no doubt you will be heeded by the Spanish authorities; and it does not matter if they plead that I am subjected to judicial proceedings, because all times and circumstances are opportune for the application of indultos, which refer to the moment of imprisonment and its cause; and, moreover, amnesties are gubernamental, and therefore are not subordinated to sentences of the courts, but, to the contrary, such sentences and the foregoing proceedings are made subservient to gubernamental resolutions ordering amnesties.

I beg of you, therefore, to insist upon obtaining from the Spanish Government the application so long delayed already of a benefit that so fully includes me; and, with the greatest consideration for yourself, I have the honor of remaining

Yours, very respectfully,

JULIO SANGUILY.

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[Inclosure 2 in No. 152.]

*Mr. Lee to Mr. Sanguiiy.*

UNITED STATES CONSULATE-GENERAL,  
*Habana, September 28, 1896.*

JULIO SANGUILY, Esq., *Present.*

DEAR SIR: I have to acknowledge the receipt of your letter of the 23d instant, and in reply have to say that in the belief your case had been sent to Spain on appeal and that any intervention on the part of this consulate-general would be unauthorized, and that even the captain-general, if he were favorably disposed, would be powerless to do anything, I had not taken any steps before this Government in the matter of asking an indulto or pardon from the Spanish Government, especially as I had no instructions from the Department of State upon the subject, because the action of the court before my arrival here carried your case beyond my jurisdiction and out of my reach. No change in the decision of the court can be made except by the Madrid Government, and my position does not allow me to communicate directly with said Government.

I will transmit to the Department of State a copy of your letter to me and call attention to the reasons you set forth for the application in your case of General Calleja's amnesty proclamation of the 27th of February, 1895, and ask that every effort be made to settle your case by pardon; and I beg to assure you that I shall be pleased to carry out whatever instructions I may receive in your case, especially if they tend to ameliorate your condition or obtain your release.

Very respectfully, etc.,

FITZHUGH LEE, *Consul-General.*

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*Mr. Rockhill to Mr. Lee.*

No. 116.]

DEPARTMENT OF STATE,  
*Washington, October 6, 1896.*

SIR: Your dispatch No. 152, of the 30th ultimo, with inclosures, relative to the case of Julio Sanguiiy, has been received, and in reply you are informed that our minister at Madrid cabled to the Department on the 3d instant that this case has been remanded for a new trial.

I am, etc.,

W. W. ROCKHILL.

*Mr. Lee to Mr. Rockhill.*

No. 164.]

UNITED STATES CONSULATE-GENERAL,

*Habana, October 7, 1896.*

SIR: As inquiries may be made at the Department by friends of Mr. Julio Sanguiy as to the present status of his case, in view of the recently reported favorable decision in the appeal (*casacion*) of his case, carried to Madrid, I have the honor to transmit herewith for the information of the Department copy of a letter written by me to the governor and captain general asking that certain comforts and privileges be accorded him during his confinement, and a copy of his excellency's reply refusing to make Sanguiy any further concessions.

The governor and captain fails to note the point I attempted to make respecting certain privileges to be granted this prisoner, which I asked in consequence of his many old wounds, some of them active to-day, and his impaired health resulting from his confinement, which requires his removal to a hospital or the presence of some person with him, particularly at night.

I agree with General Weyler that all prisoners should be treated exactly alike, but this should not prevent exceptions being made specially in a case such as that of Sanguiy, namely, that of an unusually long confinement with no decision rendered, and bad health.

I am, etc.,

FITZHUGH LEE, *Consul-General.*

[Inclosure 1 with No. 164.]

*Mr. Lee to the Captain-General of Cuba.*

CONSULATE-GENERAL OF THE UNITED STATES,

*Habana, October 5, 1896.**His Excellency the Governor Captain-General of the Island of Cuba, etc.:*

EXCELLENCY: Previous to the reception of the letter herewith inclosed my attention had been called to the case of the American citizen, Julio Sanguiy, who has now been confined in a cell in the fortress Cabaña for nineteen months.

I have been informed that an appeal taken on the ground of some informality in the trial of the case had been successful, and that the case will have to be retried, at least from the point where a plea of this nature was sustained.

Knowing well that the case has passed beyond your jurisdiction, I only refer to the subject because if the second trial takes as long as the first he may remain a prisoner for the next nineteen months. Therefore, he has some claim to have his condition ameliorated to some extent because through no fault of his, but from the action of the court which tried him, he has been and will be subject to a very long confinement, and Sanguiy's health has suffered so much from his long confinement that his physical condition is not good, and that he requires attention.

The permission given to his wife and son to visit him each day, and to his son to sleep in the cell with him, has been recalled, and at this time his wife can only see him on visitors' day, and his son has been told that if he wants to sleep with his father he will have to stay in the cell all the time, or else depart and not return to said cell, which would deprive his father of his assistance should he be needed during the night.

I respectfully request Mrs. Sanguiy be permitted to visit her husband as formerly, and that his son be allowed to leave the cell during the day for the exercise and fresh air necessary to youth, and in the evening be allowed to go back to his father's cell and remain during the night.

I have, etc.,

FITZHUGH LEE,  
*Consul-General.*

[Inclosure 2 in No. 164.]

*The Captain-General of Cuba to Mr. Lee.*GENERAL GOVERNMENT OF THE ISLAND OF CUBA,  
*Habana, October 6, 1896.**The Consul-General of the United States, Habana.*

SIR: I have to acknowledge the receipt of your communication, dated yesterday, asking for certain privileges in favor of the political prisoner Mr. Julio Sanguily, in view of the requests he makes in the letter to you, which you also accompany.

As is verified by the prisoner's own statement, he, although of the same category as others confined in the Cabaña fortress, has been the object on the part of the Government of concessions not granted to them, and has been allowed unusual privileges to the extreme of having his son constantly with him.

It is not, therefore, possible, without incurring controversies always irritating, to make him any further concessions, because to grant them similar ones would justly and reasonably be granted to other prisoners of his class.

God guard you many years.

VALERIANO WEYLER.

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*Mr. Lee to Mr. Rockhill.*

No. 169.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, October 9, 1896. (Received October 13.)*

SIR: Referring to my dispatch No. 164, October 7, in the case of Julio Sanguily, I respectfully request to know if the subject of his confinement could not be brought to the attention of the Government at Madrid, with the request that the authorities here be instructed to have his confinement made more endurable. It seems to me that this should be done, first, on the ground of his ill health; second, that as a political prisoner he has been already imprisoned over nineteen months, and that the supreme court at Madrid has remitted his case for retrial, I am informed, on the ground that there was a lack of proof to warrant his conviction.

It is proposed, therefore, to punish him still further because, as the supreme court said, the court of original jurisdiction did not have the proof to convict, it seems that it would be an act of justice to ameliorate his condition, at least to some extent, while waiting for a new trial.

I am, etc.,

FITZHUGH LEE, *Consul-General.*

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*Mr. Baldwin to Mr. Lee.*

No. 129.]

DEPARTMENT OF STATE,  
*Washington, October 17, 1896.*

SIR: The Department has received your dispatch No. 169, of the 9th instant, suggesting that a request be made by the minister at Madrid for the amelioration of the condition of Julio Sanguily, esq., during his continued confinement awaiting a new trial, and in reply you are informed that a copy was sent to Mr. Taylor on the 15th instant.

You are also informed that on the 13th instant a telegram was sent to the minister by the Department in the following words:

In view of Sanguily's long confinement, now lasting nineteen months, and impairment of his health, you will ask all possible amelioration of his position pending retrial.

On the next day a telegram was received from Mr. Taylor stating:  
Minister for foreign affairs promises all possible for Sanguiely.

I am, etc.,

WM. WOODWARD BALDWIN,  
*Third Assistant Secretary.*

*Mr. Rockhill to Mr. Lee.*

No. 161.]

DEPARTMENT OF STATE,  
*Washington, November 12, 1896.*

SIR: Referring further to your dispatch, No. 169, of the 9th ultimo, I inclose for your information a copy of a dispatch from our minister to Spain, in which he reports that the Spanish minister of state informed him that the recommendation for amelioration of the condition of Julio Sanguiely, pending his new trial, has been made.

I am, sir, etc.,

W. W. ROCKHILL.

*Mr. Springer to Mr. Rockhill.*

No. 261.]

UNITED STATES CONSULATE-GENERAL,  
*Habana, December 16, 1896. (Received December 21.)*

SIR: I have the honor to transmit herewith, for the information of the Department, the accompanying clippings from the "Judicial notices" of the *Diario de la Marina*, respecting the case of Julio Sanguiely, which is set down for a public hearing (*juicio oral*) on the 21st instant.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

[Inclosure in No. 261.—Translation of clippings from *Diario de la Marina*—Judicial notices.]

#### THE CASE OF SANGUILY.

*TUESDAY, December 15, 1896.*

In the case instituted against Julio Sanguiely y Garit, for the crime of rebellion, part 1 of the criminal court of this superior court (*audiencia*), in a decree of court, dated yesterday, has ordered that the president of the court be notified to appoint two magistrates, who, with the three who have the cognizance of this case, Messrs. Ricardo Maya, Juan Valdes Pages, and José Novo y Garcia, shall make up the number of five necessary to compose the court upon the day set down for the public hearing.

The same part has also ordered that the accused, Sanguiely, be notified to name an advocate to defend him, in view of the fact that Don Miguel Viondi, who defended him on his previous trial, is now himself in prison; advising him also that should he not do so, or in case the one newly appointed does not accept the charge, the court will name the lawyer in turn corresponding.

*WEDNESDAY, December 16, 1896.*

In order to complete the full number of five magistrates who are to compose the court on the 21st instant, order for the public hearing (*juicio oral*) of this case, have also been designated Messrs. Adolfo Astudillo de Guzman and Manuel Vias Ochoteco.

The accused, Sanguiely, who was yesterday notified to appoint an advocate to defend him, has begged the court to grant him three days wherein to name one, for the reason that he has not received replies from the lawyers to whom he has applied, and his situation as a prisoner prevents him from making more active efforts in the matter.

[Telegram.]

*Mr. Springer to Mr. Rockhill.*

HABANA, December 23, 1896.

(Received December 30, 1896.)

Trial of Sanguiely commenced Monday. Finished to-day. Sentence within three days.

*Mr. Springer to Mr. Rockhill.*

No. 271.]

UNITED STATES CONSULATE-GENERAL,  
Habana, December 24, 1896. (Received December 30.)

SIR: With reference to my dispatch, No. 261, of the 16th instant, respecting the public hearing before part 1 of the criminal court of the audiencia, or superior court of Habana, of the case against Julio Sanguiely, an American citizen, charged with rebellion, I have now the honor to confirm my telegram of the 23d instant.

On account of the peculiar antecedents of Sanguiely's case, too well known to the Department to require repetition, I attended the trial as a spectator, and found the proceedings of sufficient interest to warrant me in the belief that a report of same, condensed from the published accounts, and as coming under my own observation, may prove of interest to the Department.

The court convened Monday last at 1 o'clock, and before commencing the examination of the evidence the counsel for the defense, Don Antonio Mesa y Dominguez, presented a petition to declare the nullity of all the proceedings, as having been prosecuted in violation of the protocol of January 12, 1877, which provides that American citizens shall be subject to trial for the crimes therein mentioned only by the ordinary jurisdiction, except in the case of being captured with arms in hand, and that the proceedings in said cause had been prosecuted by the law of criminal procedure which came into force January 1, 1889, instead of the law mentioned in article 4 of the protocol, and which applied to the present case, set forth in articles 20 to 31 of April 17, 1821, which required trial before six judges, instead of five then present, and for other reasons set forth.

Court took a recess to deliberate upon this point. Upon meeting again the petition was overruled. Defense noted a protest.

Trial continued by reading the findings of the prosecution, which demanded the penalty of chains for life, with costs, and of the defense, which demanded the absolution of the accused for lack of proof of his participation in the crime charged, or, in case of being declared guilty, that he be considered as within the decree of pardon of Governor-General Calleja, of 27th of February, 1895.

The accused was examined and declared his innocence of the present charges against him, but admitted having participated in the insurrection of 1868-1878. He denied having written certain letters attached to the proceedings and exhibited to him.

Reading of the documentary evidence was waived by both parties.

Three experts then made an examination of the letters referred to and several fragments of a document purporting to be an appointment of colonel made by Sanguiely to a certain Azcuy. The experts, after a close and even ridiculous examination, decided that they were all in

Sanguily's handwriting, but declared that they could not supply the words wanting in the last-mentioned document to give it the intended meaning. These are the letters upon which the prosecution principally rests its charges against Sanguily as guilty of conspiracy and rebellion.

After another short recess, the president of the court, in examination of the accused, asked him if the letter dated February 14 was written by him, which he denied, and there appearing to be a contradiction, as in a previous examination he had identified the letter as his, the experts were recalled to examine this letter also, which they declared to have been written by Sanguily.

The officers who arrested Sanguily and Azcuy were next interrogated. Upon his arrest Azcuy endeavored to chew up a document found concealed in his cravat, which it was claimed was the appointment of colonel made out to him and signed by Sanguily. Both officers testified that there had not been, previous to his arrest, any orders to watch Sanguily.

The negro woman who had care of Sanguily's room at the estate Portela was then examined. It was here that the incriminating letter alleged to have been written by Sanguily is said to have been found, upon the sale of some old furniture taken from the room he frequently occupied.

Azcuy's examination, which followed, was to get him to acknowledge where he obtained the document he concealed in his cravat.

Upon calling for the witness Antonio Lopez Coloma, who was executed a few days ago, a laugh was raised, which the president promptly stopped. The former declaration of this witness was then read, and the defense noted a protest against this proceeding.

Court adjourned.

Upon beginning the session of the second day, the fiscal, or prosecuting officer, moved to declare the nullity of the expert testimony of the previous session on the ground that, as the appointment of new experts in place of two that died had not been communicated to the defense in time to permit a challenge within three days as required by law, this want of form might affect the validity of said testimony. The defense declared that it had had ample notice of the appointment of experts, and accepted their report, and waived making any objection, but as the prosecution insisted on this point, the court took a recess to deliberate. Upon again resuming, it declared the expert testimony valid. The prosecution, however, made a protest against this ruling.

The declaration of the pawnbroker, where Sanguily had pawned his matchete and revolver, was then read, this witness being too ill to attend.

The fiscal then summed up against the accused, maintaining that he was one of the most active promoters of the present rebellion, initiated on February 24, 1895, and the leader designated by the revolutionary junta of New York to head the movement; that as such he issued commissions, among them one of colonel to José Ynocencio Azcuy, who was arrested, and the document being found concealed in the knot of his cravat, he endeavored to swallow it; that the fragments appear in the proceedings and have been declared by experts to be in the handwriting of the prisoner. The fiscal laid special stress upon the testimony of the accused, who had stated, when interrogated by the court, that he had not accepted the convention of Zanjón, of 1878, but had gone abroad to the United States, whence he did not return until 1879, and then as a citizen of the United States, and bitterly censured him for his acts of renouncing his nationality, of accepting the citizenship

of another country, even of such a country as the United States—and here the fiscal took occasion to pronounce a decided eulogium of the United States—of that friendly and powerful nation that feels bound in dignity to protect its adopted citizens who had privileges here that even those who had not ceased to be Spaniards did not enjoy, and of again returning to the land of his birthplace, of his forefathers, and of his wife and son, to resume his residence, and forgetful of the duties imposed on him as a foreign citizen, to remain neutral, to conspire to head a revolutionary movement, issuing commissions, and executing preparatory acts of rebellion such as recruiting men and acquiring arms and ammunition. That in his opinion the proofs were positive, and that he therefore demanded the penalty of chains for life.

Counsel for the defense then commenced his argument, but on account of the late hour the court adjourned.

The session of the third and last day of the trial was taken up in listening to the plea for the defense.

In this the counsel declared that the trustworthy private advices of Governor-General Calleja, who stated that Julio Sanguilý and José María Aguirre were the principal promoters of an armed rebellion, had not been proven in the trial.

General Calleja had stated that Sanguilý and Aguirre had been designated to put themselves at the head of the insurrection in the provinces of Habana, Matanzas, and Santa Clara; that they had direct relations with the revolutionary committees abroad and were delegates of the Cuban junta of New York; that they recruited men and acquired arms and ammunition to make war against the mother country, and this was confirmed by their conduct, closely watched by the police; that neither the statement of the chief of police of that date nor that of his subordinate officers have confirmed that allegation that Sanguilý was under police surveillance; that they have declared they never received any orders to that effect and had no further antecedents against Julio Sanguilý than those of his participation in the last revolution.

That on the day the present insurrection broke out Sanguilý, Aguirre, Perez Trujillo, and Gomez de la Maza were arrested. All of them, with the exception of Sanguilý, were released after a few days.

The private advices of General Calleja, whose existence in the offices of the General Government and of the captaincy-general had been denied by Gen. Martinez Campos in two official communications, which appear in the proceedings, this secret information served as the only basis for the arrest of Sanguilý, Perez Trujillo, Aguirre, and Gomez de la Maza, and ought not to have any influence in this process, because the facts have not been proved, and with respect to the others named have had no effect whatever.

Where appear the relations that Sanguilý is said to have had with the insurgents, and especially with those of Matanzas, and where appears the acquisition by Sanguilý of the war material referred to by the prosecution? And the defense refers to a communication from the governor of Matanzas to the effect that the existence of any such committee in Matanzas had not been proved, and that in the proceedings against Juan Gualberto, Gomez, and others, for the acquisition of munitions of war, there appeared no charge against Sanguilý.

Moreover, the statement of Lopez Coloma, after all, is not altogether against Sanguilý, for that which he made before the military jurisdiction relating to the manner of his capture contained nothing positive against Sanguilý; however, he was obliged to declare that Coloma's

testimony read before the court was null and void, for he had been executed, and said nullity was founded on strict principles of the law of criminal procedure.

That with respect to the expert testimony, although the experts were disposed to declare all the letters to be in the handwriting of Sanguily, yet they did not confirm anything in respect to the principal point of the colonel's commission seized upon Azcuy, and were unable to supply the words missing therein to give it sense; and even if Sanguily had issued said commission, there had been no proof presented that he was authorized, nor any proof whatever by the police or the Government that Sanguily had been designated as a leader of the rebellion; and further, that upon this point Juan Gualberto Gomez had declared that he was the only delegate of the junta, and no leader had been designated for the movement.

The counsel of the defense concluded by declaring that against Sanguily there were only his antecedents as a leader in the last insurrection, hypotheses, presumptions, suspicions, which, when taken into account that it was a question of a serious penalty, should have no weight upon the mind of the court. He therefore demanded the acquittal of his client, and finished his plea with thanks and grateful compliments to the fiscal and judges for their patient hearing.

Upon being asked if he had aught to say, Sanguily said: "Not a word, absolutely."

The trial was declared to be over, and the court rose. Sentence may be delayed five days.

I am, etc.,

JOSEPH A. SPRINGER,  
*Vice-Consul-General.*

*Mr. Lee to Mr. Rockhill.*

No. 275.]

UNITED STATES CONSULATE-GENERAL,

*Habana, December 30, 1896. (Received January 2, 1897.)*

SIR: With reference to the trial of Julio Sanguily, reported by Mr. Springer in dispatch No. 271, of the 24th instant, I have to confirm my telegram of the 28th instant, as follows:

*Assistant Secretary of State, Washington:*

Sanguily sentenced life imprisonment. Appeal to be taken.

LEE.

I am, etc.,

FITZHUGH LEE,  
*Consul-General.*

*Mr. Lee to Mr. Rockhill.*

No. 283.]

UNITED STATES CONSULATE-GENERAL,

*Habana, December 31, 1896. (Received January 6, 1897.)*

SIR: Yesterday noon I visited the Cabañas fort and had a talk with Mr. Julio Sanguily, an American citizen, and formerly a general in the insurgent army. As you know, he was arrested in his house while taking a bath on the 24th February, 1895.

Sanguily had proved himself a very brave and efficient officer in the Cuban war from 1868 to 1878, and had been wounded seven times. It was therefore naturally supposed that sooner or later he would have

joined the insurgent side of the war now in progress in this island. He had, so far as I am informed, committed no overt act in that direction, and was taken without arms in hand.

On the 28th of November, 1895, or, say, nine months and four days after he was arrested and thrown into a cell at the Cabañas fort, he was tried and sentenced to be imprisoned for life. An appeal was taken to the supreme court of justice at Madrid, which decreed, upon some technical ground, that Sanguily should be retried.

On the 21st of December, 1896, his second trial commenced, and ended by his being again sentenced to perpetual imprisonment.

From this second sentence an appeal has been taken which, whether successful or not, will greatly lengthen the time he has already passed in his cell.

The lawyer who defended this prisoner in his first trial now looks from the bar of a cell adjoining his in the Cabañas fort, and I am informed that the lawyer who managed his appeal before the Madrid court has suffered in consequence thereof, so that it may be difficult to procure in Madrid another person versed in the law who will consent to manage for Sanguily the appeal proceedings.

Only a few days after the arrest of Sanguily a proclamation was issued offering amnesty to all persons in arms who would give themselves up. It seems that this ought to apply to persons who had been arrested without arms in hand. Two other Cuban officers of distinction—Ramon Perez Trujillo and José Maria Timoteo Aguirre—were arrested, I am told, at the same time as Sanguily and for the same reason, namely, because it was thought that they would engage in the war. After a short incarceration they were liberated.

In view of all these facts, and for the additional reason that Sanguily has been in a cell twenty-three months to date, is not in good health, and is suffering from old wounds, I respectfully suggest that the Department bring these facts to the notice of the Madrid Government and ask that instructions be issued that he be released from prison on the condition that he will leave this island and not return until the present war has terminated.

I am, sir, etc.,

FITZHUGH LEE,  
*Consul-General.*

[See Claims against Brazil, Gen. Index.]

FIFTY-FIFTH CONGRESS, FIRST SESSION.

March 31, 1897.

[Senate Report No. 33.]

Mr. Turpie, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Hinton R. Helper in relation to the claim of Helen M. Fiedler, executrix of Ernest Fiedler, deceased, against the Government of Brazil, have examined the facts in relation to the same and do thereupon make the following report:

The evidence before the committee appears to establish the following facts:

That on the 21st day of August, 1867, at the city of New York, Ernest Fiedler, now deceased, whose executrix, Helen M. Fiedler, is the widow of said deceased, and is the present claimant, was the owner of the steamship *Circassian*, of the first part, and Domingo de Goicouria, who acted as agent for immigration for the Brazilian Government, of the second part, made a contract in writing for the charter of the steamship *Circassian* for a voyage from the port of New Orleans, La., to Rio de Janeiro, Brazil.

The vessel was engaged to carry passengers to be furnished by the second party from New Orleans to Rio de Janeiro. At the time the contract was made it was supposed that many citizens of the United States desired, in consequence of the condition of affairs here resulting from our civil war, to emigrate to Brazil, and the Brazilian Government desired their presence there and wished to assist such emigration.

The parts of the contract material in this connection are that the vessel, which was then en voyage to Bremen, was to sail from New Orleans on the 15th day of November, 1867, weather permitting, unless detained at Bremen or elsewhere by causes beyond the control of the first party, in which case she should sail within ten days after her arrival at New Orleans, and that the second party (Brazil) should pay for the voyage the sum of \$42,000 in American gold, or its equivalent in milreis, ten days after the completion of the voyage. The *Circassian* did not reach New York on her return voyage from Bremen until about the 1st of November, 1867. Certain alterations and repairs of the vessel were required to accommodate her to the transportation of the large number of passengers she was intended to carry, so that she did not leave New York until the 23d of November, 1867, and did not reach New Orleans until the 6th day of December of that year. Before her arrival at New Orleans it was ascertained that no passengers were there for embarkation.

On the 17th of December, 1867, Mr. Fiedler addressed a letter to

Chevalier Fleury, chargé d'affaires of Brazil to the United States, setting forth the condition of affairs, and asking his advice whether he (Fiedler) should send the vessel to Rio de Janeiro without passengers and subject the Brazilian Government to the payment of the \$42,000 agreed on as the price of the voyage, or whether the chargé would release him from his obligations. In this letter Mr. Fiedler stated that his expenses in preparing for the voyage amounted to about \$20,000, and suggested that "remuneration of this sum would perhaps be preferable than in default to forfeit \$42,000 gold, equal to \$55,000 currency." On the 18th of December the Brazilian chargé, in reply to Mr. Fiedler's letter of the 17th, advised Mr. Fiedler "not to allow the steamer to sail, but to consider the charter party completely null and void," and further writes: "I shall immediately call the attention of my Government to the subject, and ask it to take into consideration the sum represented by you, and to indemnify you for the losses sustained." On the next day (December 19) Mr. Fiedler acknowledged the receipt of the letter of the Brazilian chargé of the 18th, and added:

Relying upon your assurance and in full confidence of the just acts of your Government, I have immediately telegraphed to New Orleans to withdraw the *Circassian* from her voyage and ordered her return. As the preparations for this voyage have cost me an outlay of over \$20,000, an early and prompt remittance is respectfully requested; and taking into consideration that I acted throughout in the interest of the Brazilian Government, and would have gladly avoided the voyage had I not been forced by their agent to proceed, I hope my request will be granted.

The Emperor of Brazil has been advised by the section of home affairs of his council of state that the contract entered into between Mr. Fiedler and Mr. Goicouria, who claimed to be the agent of the Brazilian Government, was not valid, for the alleged reason that Mr. Goicouria was not, in fact or in law, such agent. It is evident that this advice was not well considered by the council of state for these reasons.

Mr. Fiedler, before entering into the contract with Mr. Goicouria, very prudently sought to know the extent of Mr. Goicouria's authority, and upon inquiry found that Mr. Russell Sturgis, of New York, acting for the owners of the steamship *Marmion*, had, in March, 1867, addressed a letter to the Brazilian legation to the United States inquiring as to the authority of Mr. Goicouria to charter vessels for the Brazilian Government to carry emigrants from the United States to Brazil, and had received from the Brazilian legation the following reply:

BRAZILIAN LEGATION,  
New York, March 15, 1867.

SIR: In answer to your letter of yesterday's date, I have the honor to inform you the name of the agent of the Brazilian emigration, Mr. Quintino de Souza Bocayura.

This gentleman has power to charter steamers or sailing vessels to take emigrants from the south ports of the United States to Brazil.

According to the contract made between the Imperial Government and the United States and Brazil Mail Steamship Company, he can have a delegate, and Mr. D. de Goicouria is the delegate appointed by him. I believe the Government will approve what is done by the said agent.

I have the honor to be your obedient servant,

H. CARDLEANTI ALBERQUERQUE.

RUSSELL STURGIS, Esq.

Mr. Fiedler's inquiries developed the further facts that the owners of the steamship *Marmion*, acting upon the letter of the Brazilian legation, had contracted with Mr. Goicouria, as agent of the Brazilian Government, for a voyage of the *Marmion* to Brazil; that such voyage had been made and concluded before the date of Mr. Fiedler's contract with Mr. Goicouria, and that the Brazilian Government had recognized Mr. Goicouria's authority to charter the *Marmion* by paying the money provided by the charter party to be paid for the voyage.

Mr. Fiedler, who knew, as the world knows, the many proofs the Emperor of Brazil has given of his wisdom and justice, and the mutual friendship and good will that have always prevailed between the United States and Brazil, was fully justified in accepting as conclusive the foregoing evidence of Mr. Goicouria's authority to act for the Brazilian Government.

But there is further evidence of Mr. Goicouria's authority. The Brazilian Government in 1866 sent to the United States the citizen, Guintino de Souza Bocayura, to encourage the expected emigration from the United States to go to Brazil. In February, 1867, the agent, Bocayura, advised his Government, among other things, of his intention to return to Brazil, and that he had left as his representative in the United States Mr. Goicouria (the agent with whom Mr. Fiedler and the owners of the *Marmion* subsequently contracted). In May, 1867, the Brazilian Government acknowledged the receipt of the communication of Agent Bocayura of February, 1867, and on the 24th day of August, 1867 (three days after the date of the contract made by Mr. Fiedler), advice is sent from Rio de Janeiro to Mr. Goicouria, at New York, withdrawing his authority under Bocayura's appointment. In this "aviso" is the following language: "The Imperial Government, having taking sundry measures for the purpose of attracting to this country the emigration from the Southern States of the American Union and the necessity ceasing of continuing there Domingo de Goicouria to freight steamers for the transportation of such emigrants," etc., which can only be fairly construed as recognizing Mr. Goicouria as the agent of the Brazilian Government, and as including within the scope of his agency the freighting of steamers for transportation of emigrants.

Enough appears, as we think, in the testimony submitted to the committee to justify the belief that the Brazilian Government is indebted to the Fiedler estate, which the present claimant represents, in a certain sum of money, either the amount agreed to be paid for the chartering of the *Circassian* under the charter party, or the sum of \$20,000, the sum actually expended in preparing the vessel for carrying the passengers expected on said voyage, with interest from December, 1867.

The committee therefore recommends the passage of the resolution hereunder written, recommending that the President will call the attention of the Government of Brazil to the justice of the claim in favor of this citizen of the United States and to the propriety of its being in some manner adjusted at an early day and satisfied.

It is proper to say that this same state of facts and testimony was formerly referred to this committee, and that on February 5, 1884, Mr. Morgan, then a member of the committee, reported substantially and yet more fully the facts herein set forth, and thereupon the committee approved his report and recommended the adoption of a similar resolution to that which is above mentioned, but for some reason the Executive failed to take any action on the resolution.

The committee therefore report the following resolution to the Senate and recommend its passage:

*Resolved by the Senate, the House of Representatives concurring,* That the President of the United States be requested to bring to the attention of the Government of Brazil the claim of Helen M. Fiedler, executrix of Ernest Fiedler, deceased, against the Government of Brazil, growing out of a contract alleged by said claimant to be obligatory on that Government, for the hire of the ship *Circassian* to transport emigrants from the United States to Brazil in the year 1867, with a view to ask said Government to consider the said claim and to provide for the allowance and payment of such sum as shall be found just to such claimant.

[See Claims against Spain, Gen. Index.]

**FIFTY-FIFTH CONGRESS, FIRST SESSION.**

**July 7, 1897.**

[Senate Report No. 371.]

Mr. Lodge, from the Committee on Foreign Relations, submitted the following report:

The facts in connection with this case are fully recited in Document No. 47, Fifty-fifth Congress, first session, and in House Document No. 224, Fifty-fourth Congress, first session, pages 111 to 134.

An examination of these documents discloses, in brief, that August Bolten and Gustave Richelieu, two naturalized American citizens, the former a native of Sweden and the latter of France, set out in a small, open boat about 15 feet long from Port au Prince on February 5, 1895. Their object was to fish for green turtles, and, with this in view, they intended to sail up as far as Cape Haitien. Both men were sailors who had drifted to Haiti from New York during the years 1893 and 1894. It appears that Bolten had managed to save a little money by doing some painting at Port au Prince, and that the small fishing boat was his property. Before leaving port the men secured the usual papers issued from the American consulate, which identified them and established their American citizenship. This attempt to go in a small, open boat from one Haitien port to another did not succeed, and they were finally driven, by stress of weather, to the coast of Cuba. Temporary landings were effected at one or two points along the Haitien and Cuban coasts, and finally, almost destitute of food and water, and after drifting about for several days, they reached Santiago de Cuba. The testimony discloses that they at once produced their papers for inspection to the captain of the port, explained their distress, and asked to be directed to the United States consul. Notwithstanding these admitted facts, they were seized by the military authorities on February 23, 1895, and thrown into a prison, from which they were not released until May 3 following. During this imprisonment both men were kept in close confinement much of the time, and both suffered great injury to health thereby. Bolten contracted yellow fever.

The seizure of these men is believed by the committee to have been in violation of article 8 of the treaty of 1795, which (in the language

of Secretary Olney) "provides for the hospitable reception of American citizens who, through stress of weather, are driven upon Spanish territory." It is further evident to the committee that the proceedings inaugurated by the military authorities against Bolten and Richelieu are a violation of the protocol of January 12, 1877, which (again quoting Secretary Olney) "provides that citizens of the United States taken without arms in hand shall be tried by the ordinary civil tribunals, to the exclusion of any special tribunal, and when arrested and imprisoned shall be deemed to be arrested or imprisoned by order of the civil authority." Both men were held by the military authorities from the 23d of February to the 21st of March, when they were turned over to the civil tribunal of the province of Santiago. It ought further to be observed that a most rigid search at the time of their seizure by the Spanish authorities failed to disclose any arms or papers or other evidences of unlawful intent.

Bolten and Richelieu have each asked for an indemnity of \$10,000 from the Spanish Government for the injuries resulting from their sixty-two days of confinement and also for the confiscation of the fishing boat. A settlement of this claim has been pressed upon Spain through the proper diplomatic channels of our Government. This effort has been unavailing, and the Spanish Government has distinctly declined "to discuss any further the present claims" and consider the incident "to be definitely ended."

In view of the above, the committee is of the opinion that it is the manifest duty of the United States to take such prompt measures as shall be adequate to obtain an indemnity for all wrongs and injuries suffered by the two American sailors, Bolten and Richelieu.

The committee accordingly reports the following joint resolution, and recommends its adoption:

JOINT RESOLUTION for the relief of August Bolten and Gustave Richelieu.

Whereas it appears from the correspondence transmitted to the Senate by the message of the President of the nineteenth day of April, eighteen hundred and ninety-seven (Executive Document Numbered Forty-seven, first session Fifty-fifth Congress), that an indemnity has been demanded by the executive department of the United States from the Spanish Government, but without avail, for the wrongful arrest and imprisonment of August Bolten and Gustave Richelieu, two naturalized citizens of the United States, under circumstances that render the Kingdom of Spain justly responsible therefor; and

Whereas it further appears, from the correspondence aforesaid, that all the diplomatic efforts of the Government of the United States exerted for an amicable adjustment and payment of the just indemnity due to the aforesaid citizens of the United States, upon whose persons the aforesaid wrongs were inflicted, have proved entirely unavailing: Therefore,

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, empowered to take such measures as in his judgment may be necessary to obtain the indemnity from the Spanish Government for the wrongs and injuries suffered by August Bolten and Gustave Richelieu, by reason of their wrongful arrest and imprisonment by Spanish authorities at Santiago de Cuba in the year eighteen hundred and ninety-five; and to secure this end he is authorized and requested to employ such means or exercise such power as may be necessary.

[See Claims against Spain, Gen. Index.]

**FIFTY-FIFTH CONGRESS, FIRST SESSION.**

**July 14, 1897.**

[Senate Report No. 377.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred Senate resolution No. 149, presented by Mr. Berry, submit the following report:

On the 25th day of April, 1896, the schooner *Competitor*, a regularly documented American vessel, was captured by a Spanish gunboat at a place alleged to be within the territorial waters of Spain, a few miles west of Habana. The following persons, being then on board of her, were taken prisoners, viz, Alfredo Laborde, Ona Melton, and William Gildea. Laborde claims to be a native of New Orleans, La. He was the regularly licensed master of the vessel, and to be such must have been a citizen of the United States. William Gildea acted as mate, but was born in Liverpool, England. Ona Melton was born at Vinland, in the State of Kansas, and he voted at Aurora, in the State of Arkansas, in 1894.

The circumstances preceding and attending the capture of the vessel and these men are stated in the affidavit of Laborde, Melton, and Gildea, made May 8, 1896, to be as follows:

The vessel belonged to Mr. Joseph Well, of Key West, and had a regular license. Laborde cleared her at the Key West custom-house, with 4 others besides himself as crew, 5 in all, and took on board 24 men as passengers for Lemon City, Fla., at \$2 each. When in the neighborhood of Cape Sable, on the 22d of April, 1896, these passengers forcibly took charge of the ship, and 6 of them came into the cabin to make him surrender the vessel. This he did at the muzzle of a pistol presented at his breast by one of them named Taboada. They ran the schooner to Cape Sable and there took on board 25 men with arms and munitions, and informed Laborde that between Cape Sable and Rebecca Light they expected to meet a steamer with more men and arms for Cuba.

When they arrived off Rebecca Light, Laborde told them that the schooner could not go into the Gulf on account of her bad condition, but Taboada, who acted as pilot, told him to shut up, and overpowered

his objections. The vessel reached Cuba, near Berracos, San Cayetano, on the 25th of April, and immediately landed her cargo and passengers by boats. The passengers forced Laborde to go in the first boat, with one of the crew and 19 men, all of whom landed and escaped. He went back on board and another lot landed. At this time they were sighted by a Spanish tug or steam launch. He ordered the American flag to be set. While William Gildea, the mate, tried to set it, he found the halyards foul, and being shot at twice, he threw the flag down. Laborde then held the flag against the rigging so it could be seen.

No shot was fired from the schooner, for they had no arms, although the passengers who had gone ashore had arms, and, as Laborde also understood, dynamite. No effort was made by Laborde or the others to escape with the passengers, because they had been forced into their existing situation. The captors put Laborde into what is called a Spanish windlass by tying his wrists together and then drawing the rope tight by a stick thrust through, which caused great torture and made his wrists swell. The *Competitor* and the captives were immediately taken to Habana, and the latter were placed in prison, where they have ever since remained.

These affidavits are not contradicted by any statements in the message and accompanying documents transmitted by the President to the Senate, nor do these papers present any evidence as to whether the *Competitor*, when seized, was within 1 marine league of the coast of Cuba.

The case was considered by the Spanish authority to be one of admiralty jurisdiction, and accordingly, upon the 1st day of May, 1896, a summary naval court-martial was constituted for their trial for crimes designated, by reference and allusion in the copies of official documents which are in the possession of this committee, as piracy and rebellion. No copy of the charges has, so far as your committee can ascertain, ever been furnished to this Government, though frequently requested.

Against the jurisdiction and competency of this tribunal and method of procedure the American consular representative at Habana, under instructions from the Department of State, most earnestly protested on the same day, insisting that the case should be tried under the seventh article of the treaty with Spain, concluded in the year 1795, and under the protocol to said treaty of 1877, and that it should not be tried by a summary court-martial, or by any other form of procedure not adjusted to the terms of the treaty. He also insisted that Laborde, being the master, and Gildea, the mate of the vessel, were, according to paragraph 171 of the Consular Regulations, entitled to the protection of the United States.

The admiral to whom this protest was made, and who was the official in whom the Spanish jurisdiction in the premises seems to have rested, while expressing a willingness to furnish a copy of the charges against the men to the American consul as had been demanded, seems never to have done so. Their trial took place within fifteen hours after he made this offer. The admiral, acting under the advice of the Spanish judge-advocate, denied the validity of these objections and protest upon the ground that neither Article VII, of the treaty of the 27th of October, 1795, nor the protocol of 1877 applied to the case, for the reason, as he asserted, that foreigners must be tried by the same courts having cognizance of Spanish subjects, according to the local law relating to foreigners, of the 4th of July, 1870, and because that, whatever interpretation and scope may be given to the treaty and the protocol construing it, the latter, from the beginning, embraces only resident American citizens.

To this last contention as to the protocol the American consul very properly replied that Article VII of the treaty of 1795 imposes no condition of residence either on Spanish subjects in the United States or on American subjects resident in the dominions of Spain; for were it so the status of American citizens could be taken away from thousands of Spaniards in the United States, who visit both countries every year as merchants, manufacturers, traders, and tourists. He also interposed to this contention of the Spanish admiral the very decisive objection that the protocol can not detract from the treaty, and that the protocol must be construed to conform to the treaty, and not the treaty to the protocol.

The foregoing is a compendium of demands, protests, objections, and refusals which began before the trial of these men, and which were continued for some time after such trial had been completed by their sentence to death.

They were tried by a naval court-martial of the most summary character, on the 8th day of May, 1896, the trial lasting but a few hours. They had no opportunity to summon or examine witnesses, or to be defended by counsel of their own selection. They were not tried separately but together, and, it seems, with several other persons. The evidence against them consisted solely of the testimony of Captain Butron and the other officers of the *Mensajerra*, the Spanish gunboat which had taken them prisoners. A lieutenant of the Spanish navy was assigned to their defense, who asked no questions upon the trial and who produced no witnesses. His summing up consisted of a plea for mercy to the prisoners, although it is said that he stated they were American citizens. There was an interpreter present, but he did not make his presence known to the prisoners until they were asked if they had anything to say in their own defense. This was after the summing up of the prosecution, and of course was after the evidence, both of which were given in Spanish and were not translated to the prisoners.

The naval officer who was appointed to defend them did not communicate to them the substance of the evidence or of the summing up of the prosecutor. It is very evident that this naval officer could not speak English. It appears to the satisfaction of your committee that he did not utter a single word to his clients during the trial, and that he did not say or do anything in behalf of the prisoners, except to ask mercy.

After this mockery of a trial the presiding officer of the court-martial asked Laborde in Spanish what he had to say in his defense. Laborde understood that language. He said a few words. So it went on until the last man was reached, William Gildea, and the presiding officer spoke to him in Spanish. He did not understand, and then the interpreter said, "Do you wish to say anything?" and Gildea then arose and said, "All I have to say is, I do not understand one word which has been said to-day, either for me or against me, and, at any rate, I appeal to both the British and American consuls." Melton said, truly, that he came aboard the schooner as the correspondent of the Jacksonville Times-Union. The trial terminated immediately after these statements were made. The prosecutor moved for a sentence of death and it was straightway pronounced.

The Department of State requested, or demanded, that Spain should not execute the sentence until a copy of the charges and evidence could be furnished to this Government and an opportunity given to investigate the case. The execution of the sentence seems to have been stayed, pending an appeal to the superior tribunals of Spain at Madrid, and the result was that after long delay the judgment of the court-martial

was annulled about September 8, 1896, and a new trial ordered before the ordinary tribunals.

It will be observed that this judgment of reversal proceeds upon the theory that these captives are justiciable in the Spanish courts for crimes alleged to have been committed by them against Spanish laws, and it decided nothing more than that the naval court-martial was not a proper or competent tribunal for their trial. The appellate court merely held that Spain had mistaken her own forum.

Shortly after this decision, Melton, on the 17th of October, 1896, was taken to the guardroom in the prison to make a preliminary deposition, preparatory, as he says, for trial by an ordinary court-martial upon the charge of piracy and rebellion. The first trial had been by a summary naval court-martial. On the 19th of October this procedure was continued, and he was asked, as he had been on the previous day, what proofs he could produce to show he was an American citizen, notwithstanding the fact that it seems to have been conceded throughout the first trial that he was an American citizen.

This mode of examination continued until December 11, 1896, and probably thereafter, for upon that day Mr. Laborde wrote to Mr. Springer, informing him that he had been ordered on the day before by the military judge of the prosecution of the *Competitor* crew to dress himself in a military suit for the purpose of being recognized by someone. Against this requirement Laborde protested, and refused to disguise himself. The military judge immediately answered that he would compel Laborde by force to comply, and, fearing brutality, he obeyed. Since that time no proceedings by way of trial have been had. From the 30th of April or the 1st of May, 1896, down to the present time, a period of more than fourteen months, Melton, Laborde, and Gildea have been in close confinement in the Cabanas prison or fort at Habana.

The portions of the treaty, protocol, Consular Regulations, and statutes having reference to the foregoing statements are as follows:

#### ARTICLE VII.

And it is agreed that the subject or citizens of each of the contracting parties, their vessels or effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition or other public or private purpose whatever; and in all cases of seizures, detention, or arrest for debts contracted, or offenses committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular form of proceedings usual in such cases. The citizens and subjects of both parties shall be allowed to employ such advocates, solicitors, notaries, agents, and factors, as they may judge proper, in all their affairs and in all their trials at law in which they may be concerned, before the tribunals of the other party; and such agents shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials. (Treaty with Spain, 1795.)

1. No citizen of the United States residing in Spain, her adjacent islands, or her ultramarine possessions, charged with acts of sedition, treason, or conspiracy against the institutions, the public security, the integrity of the territory, or against the supreme Government, or any other crime whatsoever, shall be subject to trial by any exceptional tribunal, but exclusively by the ordinary jurisdiction, except in the case of being captured with arms in hand.

2. Those who, not coming within this last case, may be arrested or imprisoned, shall be deemed to have been so arrested or imprisoned by order of the civil authority for the effects of the law of April 17, 1821, even though the arrest or imprisonment shall have been effected by armed force.

3. Those who may be taken with arms in hand, and who are therefore comprehended in the exception of the first article, shall be tried by ordinary council of war, in conformity with the second article of the hereinbefore-mentioned law; but

even in this case the accused shall enjoy for their defense the guaranties embodied in the aforesaid law of April 17, 1821.

4. In consequence whereof, as well in the cases mentioned in the third paragraph as in those of the second, the parties accused are allowed to name attorneys and advocates, who shall have access to them at suitable times; they shall be furnished in due season with copy of the accusation and a list of witnesses for the prosecution, which latter shall be examined before the presumed criminal, his attorney, and advocate, in conformity with the provisions of articles 20 to 31 of the said law; they shall have the right to compel the witnesses of whom they desire to avail themselves to appear and give testimony or to do it by means of depositions; they shall present such evidence as they may judge proper, and they shall be permitted to present and to make their defense, in public trial, orally or in writing, by themselves or by means of their counsel.

5. The sentence pronounced shall be referred to the audiencia of the judicial district, or to the Captain-General, according as the trial may have taken place before the ordinary judge or before the council of war, in conformity also with what is prescribed in the above-mentioned law. (Protocol of 1877.)

171. If the consul is satisfied that an applicant for protection has a right to his intervention he should interest himself in his behalf, examining carefully his grievances. If he finds that the complaints are well founded he should interpose firmly, but with courtesy and moderation in his behalf. If redress can not be obtained from the local authorities the consul will apply to the legation of the United States, if there be one in the country where he resides, and will in all cases transmit to the Department copies of his correspondence, accompanied by his report. (United States Consular Regulations.)

Officers of vessels of the United States shall in all cases be citizens of the United States. (Rev. Stat., sec. 4131, p. 795.)

If the uncontradicted affidavits of Melton, Laborde, and Gildea are to be taken as true, and if it is conceded that the vessel was seized and that they were arrested, within 1 marine league of the coast of Cuba, it is equally well established that they were coerced to that point by superior force. Under such circumstances these captives can not be made amenable to the laws of Spain. It is a well-settled principle of international law that the ships and subjects of a neutral nation, which are driven by superior force into prohibited ports or waters of a belligerent, draw upon themselves no penal consequences therefor, but must be allowed freely to depart therefrom; and the carrying of these three men into Cuban waters was as involuntary on their part as if they had been driven thither by storm or stress of weather.

Under the facts and circumstances of this case, it is not competent for Spain to try these prisoners by any military tribunal whatever. Two of the men, Gildea and Laborde, were officers of an American vessel driven under duress into Cuban waters; Melton, a passenger, was an American native citizen before he took passage—a friendly neutral, a noncombatant, not armed in any way, and his character was not changed by the forcible diversion of the vessel from its voyage to Lemon City to the Cuban coast.

They are not amenable to the jurisdiction of any Spanish courts for piracy, for the reason that it plainly appears that they had never committed or could have intended to do any act of robbery or depredation upon the high seas, which acts are the essentials of piracy, and it is clear that no such acts were ever intended by either of these prisoners.

Piracy is an assault upon vessels navigated on the high seas, committed *animo furandi*, whether the robbery or forcible depredation be effected or not, and whether or not it be accompanied by murder or personal injury. (1 Phill., Sec. CCCLVI.)

Piracy, by the law of nations, is defined with reasonable certainty to be robbery upon the seas. (U. S. v. Smith, 5 Wheat., 153.)

By the law of nations, robbery or forcible depredation upon the sea, *animo furandi*, is piracy. (Story Const., § 1159.)

It is not competent for Spain, by declaring that to be piracy which is not piracy under the definitions of international law, to extend the penalties of that crime, or the jurisdiction of its courts as to piracy, to the

subjects of other nations, or to incorporate in any way its own municipal definition of the crime of piracy into the law of nations to any degree beyond the definition established by international law.

Nor are these prisoners amenable to any Spanish court for the crime of rebellion by reason of any acts committed by them, even if such acts are subjected to the most strict and adverse construction. Allegiance either as a subject or as an alien amenable by residence or presence to the laws of a foreign state is an indispensable element to constitute the crime of treason or rebellion. It is the opinion of your committee that these men never became amenable to the laws of Spain to that intent.

Irrespective of any of the foregoing considerations, the conduct of Spain, as hereinbefore detailed, constitutes such delay and denial of justice and such an actual infliction of injustice upon these men as to make it the duty of this Government to demand reparation therefor, irrespective of any act which these prisoners may have committed up to the date of their capture. Among the acts of reparation which ought to be demanded should be the release of these captives.

The principles which govern the trial of such cases as this were correctly expressed by Mr. Evarts, while Secretary of State, as follows:

It has, from the very foundation of this Government, been its aim that its citizens abroad should be assured of the guarantees of law; that accused persons should be apprised of the specific offense with which they might be charged; that they should be confronted with the witnesses against them; that they should have the right to be heard in their own defense, either by themselves or such counsel as they might choose to employ to represent them; in short, that they should have a fair and impartial trial, with the presumption of innocence surrounding them as a shield at all stages of the proceedings, until their guilt should be established by competent and sufficient evidence. (2 Wharton Dig., p. 623.)

The rights thus defined have been violated in the persons of these prisoners. They have been tried and sentenced to death by a summary naval court-martial in a proceeding which has been annulled by the appellate courts of Spain at Madrid, upon the ground that such a court-martial had no jurisdiction whatever over them. Ten months have elapsed since this death sentence was annulled, and they have not again been brought to trial. In the mean time they have been subjected to protracted preliminary examinations preparatory to their trial by another court-martial, which differs from the first one only in the fact that it is less summary and more formal in its character than the first.

At the first trial they were not allowed to be defended by counsel of their own selection; opportunity or time to produce witnesses was denied to them by the celerity with which that trial was instituted and conducted. They were only defended by a Spanish naval officer, assigned to that duty by the court, who could not or did not speak English, who never spoke to them during the trial, who did not introduce or attempt to introduce any evidence in their behalf, who asked for no delay of the trial, and whose only exertion in their defense was a plea for mercy, which admitted their guilt. Although an interpreter was present, neither the evidence for the prosecution nor the summing up of the prosecutor was translated to them. His presence was not disclosed until after the prosecution had closed its testimony and argument. The only translation made to them was just before the close of these sanguinary proceedings, when they were asked if they had anything to say. Necessarily they had or could have little to say, although one of them, Gildea, protested that he had not understood a word of the proceedings against him by which his life was to be adjudged forfeited. With these protests the trial ended, and the defendants were immediately sentenced to death.

It is now fourteen months since they were arrested, during all of which time they have been held in the Cabañas fortress as prisoners.

Melton and Laborde are unquestionably citizens of the United States. Gildea is a British subject, but he was a sailor upon an American vessel when taken; was acting as its mate, and it is the opinion of your committee that he is entitled to be protected by this Government. He was serving under the flag and he is entitled to be protected by it.

In our opinion these acts of delay and denial of justice, and of the infliction of injustice, vitiate and make void any right which Spain had at the beginning of this transaction to proceed criminally against any of these men. This Government should demand that they be set at liberty and that the *Competitor* be restored to her owner, as there is no evidence that the owner knew anything about the divergence of the vessel from its regular voyage to Lemon City, Fla.

The committee report the accompanying joint resolution as a substitute for the aforesaid Resolution 149 and recommend its adoption.

[See Claims against Spain, Gen. Index.]

## FIFTY-FIFTH CONGRESS, THIRD SESSION.

January 11, 1899.

[Senate Report No. 1467.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations makes the following report upon a portion of the subject of Senate resolution No. 450, heretofore referred to it:

By the convention between the United States and Spain for the settlement of claims against each other, concluded February 17, 1834, Spain engaged—

to pay to the United States, as the balance on account of the claims aforesaid, the sum of twelve million reales vellon in one or several inscriptions, as preferred by the Government of the United States, of perpetual rents on the great book of the consolidated debt of Spain, bearing an interest of five per cent per annum. \* \* \* Said inscription or inscriptions shall be issued in conformity with the model or form annexed to this convention. \* \* \* And said inscriptions or the proceeds thereof shall be distributed by the Government of the United States among the claimants entitled thereto in such manner as it may deem just and equitable.

The interest of the aforesaid inscription or inscriptions shall be paid in Paris every six months after the exchange of the ratifications of this convention.

The model or form of the inscription is in Spanish, and is as follows:

*Model of inscription of perpetual rents on the great book of the consolidated debt of Spain, given in compliance with the provisions of the Convention for the Settlement of Claims, concluded February 17, 1834, between the United States and Spain.*

No. ———. Cupon de ——— pesos fuertes de renta paga- dero en — de — de ——— 183—. Cupon No. 1.	<p>RENTA PERPETUA DE ESPAÑA, PAGADERA EN PARIS Á RAZON DE 5 P. O-O AL AÑO.</p> <p>[Inscrita en el gran libro de la Deuda consolidada.]</p> <p>Esta Inscricion se expide á consecuencia de un convenio celebrado en Madrid en — de — de — entre S. M. Catolica la Reyna de España y los Estados Unidos de America, para el pago de las reclamaciones — de los ciudadanos de dichos Estados.</p> <p>INSCRIPCION No. —.</p> <table border="0"> <tr> <td data-bbox="310 1185 590 1212">CAPITAL.</td> <td data-bbox="590 1185 876 1212">RENTA.</td> </tr> <tr> <td data-bbox="310 1219 590 1246">[Pesos fuertes ó sean francos.]</td> <td data-bbox="590 1219 876 1246">[Pesos fuertes ó sean francos.]</td> </tr> </table> <p>El portador de la presente tiene derecho á una renta anual de — pesos fuertes, ó sea de — francos pagaderos en Paris por semestres, en los días — de — y de —, por los banqueros de España en aquella capital, á razon de 5 francos y 40 centimos por peso fuerte, con arreglo al Rl. decreto de 15 Diciembre de 1825.</p> <p>Consigniente al mismo real decreto se destina cada año á la amortizacion de esta renta uno por ciento de su valor nominal, á interes compuesto, cuyo importe sera empleado en su amortizacion periodica al curso corriente por dichos banqueros.—Madrid de — de —.</p> <p>El Secretario de Estado y del Despacho de Hacienda. El Director de la Rl. Caja de Amortizacion.</p>	CAPITAL.	RENTA.	[Pesos fuertes ó sean francos.]	[Pesos fuertes ó sean francos.]
CAPITAL.	RENTA.				
[Pesos fuertes ó sean francos.]	[Pesos fuertes ó sean francos.]				

The following is believed to be an accurate translation of the above form:

No. ———. Coupon of ——— hard pesos of in- terest pay- able on the ——— of ———, 183—, Coupon No. 1.	<b>PERPETUAL INTEREST OF SPAIN, PAYABLE IN          PARIS AT THE RATE OF 5 PER CENT          PER ANNUM.</b>  [Registered in the great book of the consolidated debt.]  This certificate of entry is issued pursuant to a con- vention concluded in Madrid on the ——— of ———, be- tween Her Catholic Majesty the Queen of Spain and the United States of America for the payment of claims of citizens of the said United States.
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CERTIFICATE OF ENTRY No. ———.

PRINCIPAL.

INTEREST.

[Hard pesos, or francs.]

[Hard pesos, or francs.]

The bearer of this is entitled to an annual interest of ——— hard pesos, or ——— francs, payable semi-annually in Paris, on the ——— day of ——— and ——— day of ——— by the bankers of Spain in that capital, at the rate of 5 francs 40 centimes for each hard peso, pursuant to Royal decree of December 15, 1825.

Pursuant to the said Royal decree there shall be set aside each year for the payment of this interest 1 per cent of its nominal value, at compound interest, the proceeds whereof shall be used in the periodic payment at the current rate of exchange by said bankers. Madrid, ——— of ——— of ———.

The Secretary of State for the Treasury.

The Manager of the Royal Funded Debt.

The word "inscription," as defined in the Royal Academy Dictionary, is "annotation or entry in the great book of the public debt, whereby the State recognizes the obligation to pay a perpetual interest on a principal received." Spain executed the inscriptions as required by the treaty.

The amount of the principal was about \$600,000, upon which Spain paid interest at the rate of 5 per cent per annum for sixty-two years, and has paid during this period \$1,767,000. The last payment of this interest was made on September 9, 1897, and amounted to \$28,500.

The effect of the premises was that these inscriptions became a part of the public debt of Spain, perpetual in its character. The obligation of Spain to pay them according to their tenor was not impaired by the war.

With regard to the shares held by a government or its subjects in the public funds of another, all modern authorities agree, we believe, that they ought to be safe and inviolate. To confiscate either principal or interest would be a breach of good faith, would injure the credit of a nation and of its public securities, and would provoke retaliation on the property of its private citizens. (Woolsey, *Int. Law*, 6th ed., p. 196.)

One description of property is invariably respected during war, namely, the sums due from the State to the enemy such as the property which the latter may possess in the public funds. This is justly regarded as intrusted to the faith of the nation. (Manning Com. on Law of Nations.)

It is unnecessary to multiply the citations of authorities to sustain this principle which is now so firmly established that Sir Robert Phillimore observes that "it is one which now may be happily said to have no gainsayers." (3 *Phill. Int. Law*, sec. 89.)

The obligations of Spain respecting this debt have not been affected by the war, nor are they affected by the treaty now before the Senate. That convention (Art. VII) operates only upon those claims that "may have arisen since the beginning of the late insurrection in Cuba," as to which each power relinquishes to the other all claims of its citizens, and the United States undertakes to "adjudicate and settle the claims of its citizens against Spain relinquished" by said article.

It has always been customary to insert, or to propose to insert, in treaties of peace, stipulations to revive or to continue in force treaties, or parts of treaties, in force before the war. This practice began at a very early date, when it was generally contended that war abrogated all treaties, and it has continued even as to many treaties whose character is such that modern international law has definitely established that they revive and become operative upon the conclusion of peace, *ipso facto*, and without any stipulation for their revival or continuance.

Accordingly the American Commissioners, during the recent negotiations at Paris, proposed an article that certain treaties with Spain (among which was the treaty of 1834, by which the debt in question was created) "should be held to continue in force."

The Spanish Commissioners declared themselves unable to accept the article, on the ground that—

Some of the treaties to which it referred were obsolete, or related to conditions which no longer existed; and it would involve a more extended examination than the Joint Commission was in a position to give. But this did not imply that the two Governments might not take up the subject themselves. (Ex. Doc. B, confidential, part 2, p. 254, Fifty-fifth Congress, second session.)

It was, however, in the opinion of your committee, unnecessary to undertake to revive or continue the treaty of 1834, for the reason that it had been executed by the creation of a public obligation and security of Spain, whose inviolability did not depend upon the continuing force of the treaty, but which was established by the fact that it was an outstanding security of Spain and constituted a portion of the public debt of that Kingdom.

S. Doc. 231, pt 3—22

[See Claims against Spain, Gen. Index.]

**FIFTY-SIXTH CONGRESS, FIRST SESSION.**

**January 3, 1900.**

[Senate Report No. 13.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations report, in response to the following resolution, which passed the Senate December 18, 1899:

*Resolved*, That the Committee on Foreign Relations be directed to inquire and report to the Senate at an early day the character and conditions of claims by citizens of the United States against the Government of Spain outstanding at the beginning of the late war, and what, if any, provision has been made for their payment, and to inform the Senate, if no such provision has been made, what remedy should be pursued by the claimants.

**I.**

On the 11th day of January, 1899, this committee submitted the following report as to claims between the United States and Spain disposed of by the convention of February 17, 1834, between those Governments:

The Committee on Foreign Relations makes the following report upon a portion of the subject of Senate resolution No. 450, heretofore referred to it:

By the convention between the United States and Spain for the settlement of claims against each other, concluded February 17, 1834, Spain engaged "to pay to the United States, as the balance on account of the claims aforesaid, the sum of 12,000,000 reals vellon, in one or several inscriptions, as preferred by the Government of the United States, of perpetual rents on the great book of the consolidated debt of Spain, bearing an interest of 5 per cent per annum. \* \* \* Said inscription or inscriptions shall be issued in conformity with the model or form annexed to this convention. \* \* \* And said inscriptions or the proceeds thereof shall be distributed by the Government of the United States among the claimants entitled thereto in such manner as it may deem just and equitable.

"The interest of the aforesaid inscription or inscriptions shall be paid in Paris every six months after the exchange of the ratifications of this convention."

The model or form of the inscription is in Spanish, and is as follows.

*Model of inscription of perpetual rents on the great book of the consolidated debt of Spain, given in compliance with the provisions of the Convention for the Settlement of Claims, concluded February 17, 1834, between the United States and Spain.*

No. ———. Cupon de ——— pesos fuertes de renta paga- dero en — de — de ———183— Cupon No. 1.	<p style="text-align: center;"><b>RENTA PERPETUA DE ESPAÑA, PAGADERA EN PARIS Á RAZON DE 5 P. O-O AL AÑO.</b></p> <p style="text-align: center;">[Inscrita en el gran libro de la Deuda consolidada.]</p> <p>Esta Inscripcion se expide á consecuencia de un convenio celebrado en Madrid en — de — de — entre S. M. Catolica la Reyna de España y los Estados Unidos de America, para el pago de las reclamaciones — de los ciudadanos de dichos Estados.</p> <p style="text-align: center;">INSCRIPCION No. —.</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">CAPITAL.</th> <th style="text-align: center;">RENTA.</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">[Pesos fuertes ó sean francos.]</td> <td style="text-align: center;">[Pesos fuertes ó sean francos.]</td> </tr> </tbody> </table> <p>El portador de la presente tiene derecho á una renta anual de — pesos fuertes, ó sea de — francos pagaderos en Paris por semestres, en los dias — de — y de —, por los banqueros de España en aquella capital, á razon de 5 francos y 40 centimos por peso fuerte, con arreglo al Rl. decreto de 15 Diciembre de 1825.</p> <p>Consiguiente al mismo real decreto se destina cada año á la amortizacion de esta renta uno por ciento de su valor nominal, á interes compuesto, cuyo importe sera empleado en su amortizacion periodica al curso corriente por dichos banqueros.—Madrid de — de —.</p> <p>El Secretario de Estado y del Despacho de Hacienda. El Director de la Rl. Caja de Amortizacion.</p>	CAPITAL.	RENTA.	[Pesos fuertes ó sean francos.]	[Pesos fuertes ó sean francos.]
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Accordingly the American commissioners, during the recent negotiations at Paris, proposed an article that certain treaties with Spain (among which was the treaty of 1834, by which the debt in question was created) "should be held to continue in force."

The Spanish commissioners declared themselves unable to accept the article, on the ground that—

"Some of the treaties to which it referred were obsolete, or related to conditions which no longer existed; and it would involve a more extended examination than the Joint Commission was in a position to give. But this did not imply that the two Governments might not take up the subject themselves." (Ex. Doc. B, confidential, part 2, p. 254, Fifty-fifth Congress, second session.)

It was, however, in the opinion of your committee, unnecessary to undertake to revive or continue the treaty of 1834, for the reason that it had been executed by the creation of a public obligation and security of Spain, whose inviolability did not depend upon the continuing force of the treaty, but which was established by the fact that it was an outstanding security of Spain and constituted a portion of the public debt of that Kingdom.

It affords your committee gratification to state that the conclusions expressed in the foregoing report have been practically assented to by Spain, that Government having on the 20th day of December, 1899, delivered to the Department of State of this Government two drafts of \$28,500 each in payment of the interest on the inscriptions for the years 1898 and 1899. In the note transmitting these drafts the Spanish minister observed, "the Government of His Majesty having in this way fulfilled an obligation which the events of 1898 heretofore made it impossible to discharge."

## II.

### RESPECTING OTHER CLAIMS.

Pursuant to an agreement between the United States and Spain, dated February 11 and 12, 1871, a commission was formed to settle claims of citizens of the United States against Spain for wrongs and injuries committed against their persons and property since the 1st day of October, 1868. After the close of that commission certain claims remained undisposed of. In the agreement of May 3, 1887, made by Mr. Strobel on the part of the United States and by Mr. Figueras on the part of Spain, the settlement of ten claims was provided for. Of these ten claims, four were finally rejected and six admitted to be valid by Spain. But the project failed of approval because it seemed to bind this Government to a recognition of the validity of the East Florida claims. The six claims allowed in this agreement aggregated \$328,392, to wit:

Claim of Martinez .....	\$7, 056
Claim of Izquierdo .....	2, 310
Claim of Rojas .....	156, 677
Claim of Delgado .....	117, 155
Claim of Batlle .....	25, 194
Claim of Lopez .....	20, 000
Total .....	328, 392

Four were disallowed, and it was agreed that the United States would not press them diplomatically or otherwise, to wit: Claim of Nestor Ponce de Leon, claim of José R. Simone, claim of Martini Costello Agramonte, and claim of Francesco M. de Acosta y Foster. No amounts were specified.

Finally, the agreement failed for want of approval by this Government.

Other claims were presented to this Department aggregating \$726,452, to wit:

Claim of Ricardo Nadal.....	\$100,000
Claim of the bark <i>Evanell</i> .....	500
Claim of bishop of St. Augustine, Fla.....	200,000
Claim of P. H. Emerson (rejected by Department).....	300,000
Claim of Eliza Eldridge.....	25,952
Claim of John Lee Carter.....	25,000
Claim of William L. Hardy.....	25,000
Claim of William T. Holland.....	25,000
Claim of John T. Tapley.....	25,000
Total.....	726,452

and the claim of Thomas T. Collins, no amount specified.

The said claim of P. H. Emerson for \$300,000 has been rejected by the Department.

It is impracticable to state, even approximately, the amount actually due on these claims, or to allege, in view of the state of the records of the Department of that date, that there may not be others than those above mentioned. To be able to do so would require an exhaustive research, which, in view of the available force of the Department, would involve very considerable delay.

Concerning that portion of the resolution which directs the committee to inform the Senate, if no provision has been made for the payment of any claims, what remedy should be pursued by the claimants, it is the opinion of your committee that the only present remedy is by negotiation between the diplomatic representatives of the two Governments.

[See Claims against Spain, Gen. Index.]

**FIFTY-SIXTH CONGRESS, FIRST SESSION.**

**January 24, 1900.**

[Senate Report No. 162.]

Mr. LODGE, from the Committee on Foreign Relations, submitted the following report:

[See Senate Report 371, Fifty-fifth Congress, first session, p. 326.]

[See Claims against Spain, Gen. Index.]

**FIFTY-SIXTH CONGRESS, FIRST SESSION.**

**February 28, 1900.**

[Senate Report No. 513.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

In the message of the President appended to this report (Ex. Doc. No. 93, Fiftieth Congress) transmitting the report of the Secretary of State, and which is made a part of this report, the increment and accretions mentioned in this bill are stated and the amount due to each claimant is stated in Exhibit B. The total net amount of this increment is \$14,435.50. This sum was received by the Department of State in the transactions shown in said exhibit.

This sum, with the sum of \$1,456.72, which remains unpaid to the claimants, should have been covered into the Treasury of the United States under the law of June 30, 1897.

Whether this money was in fact paid into the Treasury, or whether it was included in a deficiency of the disbursing clerk of the State Department, is left in doubt.

If it was held by the State Department in trust for the claimants, the Government is responsible for its loss, if it was not paid into the Treasury by the disbursing clerk.

The awards to the claimants were paid by Spain in several installments, and were apportioned to the claimants and paid to them by the State Department.

In order to prorate the expenses attending this transaction, 5 per cent of each award was withheld from the claimants until a final settlement of the entire account could be made after all the installments had been paid by Spain.

This sum was invested and reinvested in the bonds of the United States by the State Department, and the profits of this transaction, being \$14,435.50, is the increment mentioned in the bill.

Treating this sum as having been covered into the Treasury, an appropriation is necessary to provide for its payment to the claimants.

The bill is, therefore, so amended by the committee, and its passage is recommended.

[Senate Executive Document No. 93, Fiftieth Congress, first session.]

*To the Senate of the United States:*

I transmit herewith a report, furnished by the Secretary of State, in response to a resolution of the Senate of January 12, 1888, making various inquiries respecting the awards of the late Spanish and American Claims Commission and the disposition of moneys received in satisfaction thereof.

GROVER CLEVELAND.

EXECUTIVE MANSION,  
*Washington, February 27, 1888.*

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DEPARTMENT OF STATE,  
*Washington, February 27, 1888.*

The Secretary of State, to whom was referred the resolution of the Senate of the United States of the 12th of January last, making various inquiries respecting the awards of the late Spanish and American Claims Commission, and the disposition of moneys received in satisfaction thereof, has the honor to report that the awards were rendered in the names of the beneficiaries; that the sums reserved by the Department of State, being 5 per centum of the amounts payable to claimants, were invested solely in securities of the United States, and that the net profit of investments amounts to \$14,485.50.

The detailed information desired by the Senate respecting the receipt and payment of money in satisfaction of the awards, the amounts reserved from each claimant, the duration of the reserve, and the ratable proportion of the increment to the amounts reserved, is fully set forth in the annexed exhibits, marked A and B.

This increment is held subject to the direction of Congress.  
Respectfully submitted.

T. F. BAYARD.

To the PRESIDENT.

## EXHIBIT A

No.	Claimant.	Amount of award.	Received from Spain at the Department of State, ex- clusive of gain or loss by exchange.		Gain by ex- change.	Loss by ex- change.
			Date.	Amount.		
13	Joaquin G. de Angarica.....	<i>Dollars.</i> 823, 131. 23	June 9, 1877 Nov. 6, 1877	<i>Dollars.</i> 404, 939. 62 418, 191. 61	<i>Dollars.</i> 1, 955. 34 .....	<i>Dollars.</i> ..... 2, 491. 86
31	Joaquin M. Delgado.....	165, 977. 68	June 9, 1877 Nov. 6, 1877	82, 988. 84 82, 988. 84	400. 71 .....	..... 494. 61
66	Gonzalo Poey.....	2, 830. 27	June 9, 1877 Nov. 6, 1877	198. 44 2, 631. 83	. 96 .....	..... 15. 69
4	Peter Moliere.....	4, 230. 52	June 9, 1877 Nov. 6, 1877	2, 088. 70 2, 141. 82	10. 09 .....	..... 12. 76
41	José de J. H. y Macias .....	3, 000. 00	June 9, 1877 Nov. 6, 1877	1, 500. 00 1, 500. 00	7. 26 .....	..... 8. 94
23	José Vicente Brito .....	807. 20	June 9, 1877 Nov. 6, 1877	403. 60 403. 60	1. 96 .....	..... 2. 41
108	Charles Jemot.....	7, 272. 99	June 9, 1877 Nov. 6, 1877	3, 592. 02 3, 680. 97	17. 36 .....	..... 21. 95
14	Gideon Lowe and others.....	237. 20	June 9, 1877 Nov. 6, 1877	118. 60 118. 60	. 57 .....	..... . 70
5	James M. Edwards .....	5, 000. 00	June 9, 1877 Nov. 6, 1877	2, 500. 00 2, 500. 00	12. 10 .....	..... 14. 90
10	Theodore Cabias.....	4, 571. 34	Nov. 6, 1877	4, 571. 34	.....	27. 25
1	Henry Story.....	1, 200. 00	June 9, 1877 Nov. 6, 1877	600. 00 600. 00	2. 91 .....	..... 3. 57
87	Joseph Griffin.....	500. 00	June 9, 1877 Nov. 6, 1877	250. 00 250. 00	1. 22 .....	..... 1. 49
96	Youngs, Smith & Co.....	13, 600. 00	Oct. 25, 1880	13, 600. 00	.....	102. 04
32	Fernando Dominguez .....	1, 500. 00	Oct. 25, 1880	1, 500. 00	.....	11. 25
Amounts forwarded.....		1, 033, 858. 43	.....	1, 033, 858. 43	2, 410. 48	6, 209. 42

EXHIBIT A.

Total amount of each installment.	Aggregate of installment.	Five per cent of each installment reserved by the Department of State.	Aggregate of reserve.	Payments to claimants.				Amounts remaining unpaid.
				Date.	Original payments.	Reserve payments.	Total payments.	
<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>		<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>
406,891.96 415,699.75	822,594.71	20,344.75 20,784.99	41,129.74	June 14, 1877 Nov. 9, 1877 Feb. 12, 1885	386,550.21 394,914.76 .....	41,129.74	822,594.71	
83,389.55 82,494.23	165,883.78	4,169.48 4,124.71	8,294.19	June 15, 1877 Nov. 10, 1877 Feb. 13, 1885	79,220.07 78,369.52 .....	8,294.19	165,883.78	
199.40 2,616.14	2,815.54	9.97 130.82	140.79	June 18, 1877 Nov. 12, 1877 Feb. 11, 1885	189.43 2,485.32 .....	140.79	2,815.54	
2,098.79 2,129.06	4,227.85	104.94 106.45	211.39	June 21, 1877 Nov. 12, 1877 Feb. 11, 1885	1,993.85 2,022.61 .....	211.39	4,227.85	
1,507.26 1,491.06	2,998.32	75.36 74.55	149.91	June 23, 1877 Jan. 17, 1878 Feb. 25, 1885	1,431.90 1,416.51 .....	149.91	2,998.32	
405.56 401.19	806.75	20.28 20.06	40.34	June 25, 1877 Nov. 20, 1877 July 14, 1885	385.28 381.13 .....	40.34	806.75	
3,609.38 3,659.02	7,268.40	180.47 182.95	363.42	June 25, 1877 Nov. 20, 1877 Mar. 2, 1885	3,428.91 3,476.07 .....	363.42	7,268.40	
119.17 117.90	237.07	5.96 5.89	11.85	July 10, 1877 Nov. 14, 1877 Mar. 14, 1885	113.21 112.01 .....	11.85	237.07	
2,512.10 2,485.10	4,997.20	125.60 124.25	249.85	Sept. 20, 1877 Nov. 23, 1877 Feb. 17, 1885	2,386.50 2,360.85 .....	249.85	4,997.20	
4,544.09	4,544.09	227.21	227.21	Nov. 12, 1877 Feb. 11, 1885	4,316.88 .....	227.21	4,544.09	
602.91 596.43	1,199.34	30.14 29.82	59.96	Feb. 18, 1878 Feb. 18, 1878 Feb. 24, 1885	572.77 566.61 .....	59.96	1,199.34	
251.22 248.51	499.73	12.56 12.42	24.98	Jan. 24, 1880 Jan. 24, 1880 Feb. 24, 1885	238.66 236.09 .....	24.98	499.73	
13,497.96	13,497.96	680.00	680.00	Nov. 5, 1880 Feb. 14, 1880	12,817.96 .....	680.00	13,497.96	
1,488.75	1,488.75	75.00	75.00	Nov. 11, 1880 Feb. 14, 1885	1,413.75 .....	75.00	1,488.75	
1,033,059.49	1,033,059.49	51,658.63					1,033,059.49	

15 per cent deduction made on the full amount of award

## EXHIBIT A—Continued.

No.	Claimant.	Amount of award.	Received from Spain at the Department of State, ex- clusive of gain or loss by exchange.		Gain by ex- change.	Loss by ex- change.
			Date.	Amount.		
		<i>Dollars.</i>		<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>
	Amount forwarded.....	1,033,858.43	.....	1,033,858.43	2,410.48	3,209.42
65	Juan F. Portuondo:					
	John E. Faunce, assignee ..	12,000.00	Oct. 25, 1880	12,000.00	.....	90.04
	John A. Owens, assignee...	6,000.00	Oct. 25, 1880	6,000.00	.....	45.02
	John O'Bryne, assignee ....	12,000.00	Oct. 25, 1880	12,000.00	.....	90.02
	José A. Portuondo, heir ....	30,000.00	Oct. 25, 1880	30,000.00	.....	225.07
84	John A. Machado.....	8,355.00	Feb. 14, 1884 Apr. 8, 1884	8,131.91 223.09	22.56 1.08	..... .....
52	José M. Macías.....	227,767.18	Feb. 14, 1884 Apr. 8, 1884	221,685.20 6,081.98	614.98 29.38	..... .....
49	Magdalena F. de Mora.....	3,121.43	Feb. 14, 1884 Apr. 8, 1884	3,038.13 83.30	8.41 .40	..... .....
50	Fausto Mora and A. Arango.....	5,655.04	Feb. 14, 1884 Apr. 9, 1884	5,504.04 151.00	15.26 .73	..... .....
45	Cristobal Madan.....	38,670.90	Feb. 14, 1884 Apr. 8, 1884	37,638.27 1,032.63	104.42 4.99	..... .....
69	John C. Rozas.....	14,000.00	Feb. 14, 1884 Apr. 8, 1884	13,626.18 373.82	37.79 1.80	..... .....
127	Miguel Zaldivar.....	17,343.33	Feb. 14, 1884 Apr. 8, 1884	16,880.23 462.10	46.84 2.24	..... .....
73	Ramon de Rivas y Lamar.....	63,336.00	Feb. 14, 1884 Apr. 8, 1884	61,644.79 1,691.21	171.04 8.17	..... .....
39	Alfred G. Compton (executor of Ana T. Duggan).	56,029.59	Feb. 14, 1884 Apr. 8, 1884	54,533.46 1,496.13	151.29 7.23	..... .....
115	Manuel Antonio Montejo .....	3,900.00	Feb. 14, 1884 Apr. 8, 1884	3,795.87 104.13	10.52 .60	..... .....
	Amounts forwarded.....	1,532,036.90	.....	1,532,036.90	3,650.11	3,659.57

EXHIBIT A—Continued.

Total amount of each installment.	Aggregate of installments.	Five per cent of each installment reserved by the Department of State.	Aggregate of reserve.	Payments to claimants.				Amounts remaining unpaid.
				Date.	Original payments.	Reserve payments.	Total payments.	
<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>		<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>
	1,033,059.49		51,658.63				1,033,059.49	
11,909.96		600.00	600.00	Dec. 14, 1880	11,309.96			
	11,909.96			Mar. 3, 1885		600.00		
5,954.98		300.00	300.00	Dec. 14, 1880	5,654.98		11,909.96	
	5,954.98			Mar. 3, 1885		300.00		
11,909.98		600.00	600.00	Dec. 14, 1880	11,309.98		15,954.98	
	11,909.98			Mar. 3, 1885		600.00		
29,774.93		1,500.00	1,500.00	Apr. 6, 1881	28,274.93		11,909.98	
	29,774.93			Mar. 3, 1885		1,500.00		
							129,774.93	
8,154.47		107.72		Feb. 18, 1884	7,746.75			
224.17		11.21		Apr. 30, 1884	212.96			
	8,378.64		418.93	Feb. 14, 1885		418.93		8,378.64
222,300.18		11,115.01		Feb. 18, 1884	211,185.17			
6,111.36		305.57		Apr. 12, 1884	5,805.79			
	228,411.54		11,420.58	Feb. 11, 1885		11,420.58		228,411.54
3,046.54		152.32		Feb. 18, 1884	2,894.22			
83.70		4.18		Apr. 9, 1884	79.52			
	3,130.24		156.50	Feb. 11, 1885		156.50		3,130.24
5,519.30		275.96		Feb. 18, 1884	5,243.31			
151.73		7.59		Apr. 9, 1884	144.14			
	5,671.03		283.55	Feb. 11, 1885		283.55		5,671.03
37,742.69		1,887.15		Feb. 18, 1884	35,855.54			
1,037.62		51.88		Apr. 9, 1884	985.74			
	38,780.31		1,939.03	Mar. 3, 1885		1,939.03		38,780.31
13,663.97		683.20		Feb. 18, 1884	12,980.77			
375.62		18.78		Apr. 30, 1884	3 6.84			
	14,039.59		701.98	Feb. 11, 1885		701.98		14,039.59
16,927.07		846.35		Feb. 18, 1884	16,080.72			
465.34		23.27		Apr. 9, 1884	442.07			
	17,392.41		869.62	Feb. 13, 1885		869.62		17,392.41
61,815.83		3,090.79		Feb. 18, 1884	58,725.04			
1,699.38		84.97		Apr. 9, 1884	1,614.41			
	63,515.21		3,175.76	Feb. 11, 1885		3,175.76		63,515.21
54,684.75		2,734.24		Feb. 18, 1884	51,950.51			
1,503.36		75.17		Apr. 9, 1884	1,428.19			
	56,188.11		2,809.41	Feb. 11, 1885		2,809.41		56,188.11
3,816.39		190.32		Feb. 18, 1884	3,616.07			
104.63		5.23		Apr. 9, 1884	99.40			
	3,911.02		195.55	Feb. 11, 1885		195.55		3,911.02
	1,532,027.44		76,619.54				1,532,027.44	

<sup>1</sup>5 per cent deduction made on the full amount of each share of this award.

## EXHIBIT A—Continued.

No.	Claimant.	Amount of award.	Received from Spain at the Department of State, exclusive of gain or loss by exchange.		Gain by ex-change.	Loss by ex-change.
			Date.	Amount.		
	Amounts forwarded .....	<i>Dollars.</i> 1,532,036.90	.....	<i>Dollars.</i> 1,532,036.90	<i>Dollars.</i> 3,650.11	<i>Dollars.</i> 3,659.57
138	Francisco Bellido de Luna .....	3,000.00	Feb. 14, 1884 Apr. 8, 1884	2,919.91 80.09	8.09 .39	..... .....
106	John E. Powers .....	4,000.00	Feb. 14, 1884 Apr. 8, 1884	3,893.20 106.80	10.80 .51	..... .....
136	Louisa M. de Zenea .....	2,922.58	Feb. 14, 1884 Apr. 8, 1884	2,844.55 78.03	7.89 .38	..... .....
117	Juan San Pedro .....	1,100.00	Feb. 14, 1884 Apr. 8, 1884	1,070.64 29.36	2.96 .14	..... .....
25	Ynocencio Casanova .....	6,000.00	Feb. 14, 1884 Apr. 9, 1884	5,839.80 160.20	16.20 .78	..... .....
8	William Montgomery .....	1,000.00	Feb. 14, 1884 Apr. 8, 1884	973.30 26.70	.70 .23	..... .....
88	Waydell & Co. ....	1,556.68	Feb. 14, 1884 Apr. 8, 1884	1,515.13 41.55	4.20 .20	..... .....
89	William A. Jones .....	5,000.00	Feb. 14, 1884 Apr. 8, 1884	4,866.50 133.50	13.50 .64	..... .....
35	Henry Fritot .....	500.00	Feb. 14, 1884 Apr. 8, 1884	486.66 13.34	1.35 .06	..... .....
9	Felix Govin y Pinto .....	31,603.56	Sept. 26, 1885	31,603.56	.....	155.87
					3,721.13	3,815.44
					Net loss.	94.31
					Add net loss	
		1,588,719.72		1,588,719.72		

## EXHIBIT A—Continued.

Total amount of cash installment.	Aggregate of installments.	Five per cent of each installment reserved by the Department of State.	Aggregate of reserve.	Payments to claimants.				Amounts remaining unpaid.
Dollars.	Dollars.	Dollars.	Dollars.	Date.	Original payments.	Reserve payments.	Total payments.	Dollars.
.....	1,532,027.44	.....	76,629.54	.....	Dollars.	Dollars.	1,532,027.44	Dollars.
2,928.00 80.48	..... 3,008.48	146.40 4.02	..... 150.42	Feb. 18, 1884 Apr. 9, 1884 Feb. 11, 1885	2,781.60 76.46	..... 150.42	..... 3,008.48	.....
3,904.00 107.31	..... 4,011.31	195.20 5.36	..... 200.56	Feb. 18, 1884 Apr. 9, 1884 Feb. 11, 1885	3,708.80 101.95	..... 200.56	..... 4,011.31	.....
2,852.44 78.41	..... 2,930.85	142.62 3.92	..... 146.54	Feb. 18, 1884 Apr. 9, 1884 Feb. 11, 1885	2,709.82 74.49	..... 146.54	..... 2,930.85	.....
1,073.60 29.50	..... 1,103.10	53.68 1.47	..... 55.15	Feb. 18, 1884 Apr. 9, 1884 Aug. 25, 1886	1,019.92 28.03	..... 55.15	..... 1,103.10	.....
5,856.00 160.98	..... 6,016.98	292.80 8.05	..... 300.85	Feb. 18, 1884	5,563.20	.....	.....	152.93 300.85
976.00 26.93	..... 1,002.93	48.80 1.34	..... 50.14	.....	.....	.....	.....	.....
1,519.33 41.75	..... 1,561.08	75.97 2.09	..... 78.06	Feb. 20, 1884 Apr. 9, 1884 Feb. 16, 1885	1,443.36 39.66	..... 78.06	..... 1,561.08	.....
4,880.00 134.14	..... 5,014.14	214.00 6.71	..... 250.71	Feb. 20, 1884 Apr. 9, 1884 Feb. 16, 1885	4,636.00 127.43	..... 250.71	..... 5,014.14	.....
488.01 13.40	..... 501.41	.....	.....	Feb. 20, 1884 Feb. 26, 1885	500.00 1.41	.....	..... 501.41	.....
31,447.69	31,447.69	.....	.....	Sept. 29, 1885	31,447.69	.....	*31,447.69	.....
			77,861.97	Add amounts unpaid.....			1,587,168.70 1,456.71	1,456.71
as above	1,588,625.41 94.31			Add net loss by exchange...			1,588,625.41 94.31	
	1,588,719.72						1,588,719.72	

\* This award was for the gold equivalent of \$40,813.90 in Havana paper currency, with interest, which was ascertained to be \$31,603.56 United States currency.

## EXHIBIT B.

## CONDITION OF THE FUND.

Total amount received from Spain.	\$1,588,625.41	Paid to claimants.....	\$1,587,168.70
Interest on United States bonds....	18,606.13	Premium on United States bonds purchased.....	20,372.01
Premiums on United States bonds sold.	16,354.63	Expenses.....	103.25
		Amounts remaining unpaid, as shown on Exhibit A.	1,456.71
		Balance, being net increment.....	14,485.50
	1,623,586.17		1,623,586.17

*Ratable proportion of \$14,485.50 (the amount of the increment, as above stated) to the amount reserved from each claimant.*

No.	Claimant.	Amount reserved as shown on Exhibit A.	Duration of reserve.	Proportion.
13	Joaquin G. de Angarica....	\$20,344.75 20,784.99	From June 14, 1877, to Feb. 9, 1885.. From Nov. 9, 1877, to Feb. 9, 1885..	\$5,412.35 5,236.88
31	Joaquin M. Delgado.....	4,169.48 4,124.71	From June 15, 1877, to Feb. 9, 1885.. From Nov. 10, 1877, to Feb. 9, 1885..	1,108.82 1,038.85
66	Gonzalo Poey.....	9.97 130.82	From June 18, 1877, to Feb. 9, 1885.. From Nov. 12, 1877, to Feb. 9, 1885..	2.65 32.92
4	Peter Moliere.....	104.94 106.45	From June 21, 1877, to Feb. 9, 1885.. From Nov. 12, 1877, to Feb. 9, 1885..	27.85 26.79
41	José de J. H. y Macias.....	75.36 74.55	From June 23, 1877, to Feb. 9, 1885.. From Jan. 17, 1878, to Feb. 9, 1885..	19.99 18.29
23	Vicente Brito.....	20.28 20.06	From June 25, 1877, to Feb. 9, 1885.. From Nov. 20, 1877, to Feb. 9, 1885..	5.33 5.04
108	Charles Jemot.....	180.47 182.95	From June 25, 1877, to Feb. 9, 1885.. From Nov. 20, 1877, to Feb. 9, 1885..	47.82 45.90
14	Gideon Lowe and others...	5.96 5.89	From July 10, 1877, to Feb. 9, 1885.. From Nov. 14, 1877, to Feb. 9, 1885..	1.57 1.48
5	James M. Edwards.....	125.60 124.25	From Sept. 20, 1877, to Feb. 9, 1885.. From Nov. 23, 1877, to Feb. 9, 1885..	32.24 31.14
10	Theodore Cabias.....	227.21	From Nov. 12, 1877, to Feb. 9, 1885.. From Feb. 18, 1878, to Feb. 9, 1885..	63.38 57.18
1	Henry Story.....	59.96	From Feb. 18, 1878, to Feb. 9, 1885.. From Jan. 24, 1880, to Feb. 9, 1885..	14.63 4.38
87	Joseph Griffin.....	24.98	From Nov. 5, 1880, to Feb. 9, 1885.. From Nov. 11, 1880, to Feb. 9, 1885..	100.70 11.06
96	Youngs, Smith & Co.....	680.00	From Dec. 14, 1880, to Feb. 9, 1885.. From Dec. 14, 1880, to Feb. 9, 1885..	86.63 43.31
32	Fernando Dominguez.....	75.00	From Dec. 14, 1880, to Feb. 9, 1885.. From Dec. 14, 1880, to Feb. 9, 1885..	86.63 86.63
65	John E. Faunce.....	600.00	From Apr. 6, 1881, to Feb. 9, 1885.. From Feb. 18, 1884, to Feb. 9, 1885..	200.45 13.85
65	John A. Owens.....	300.00	From Apr. 30, 1884, to Feb. 9, 1885.. From Feb. 18, 1884, to Feb. 9, 1885..	14.15 30
65	John O'Byrne.....	600.00	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 12, 1884, to Feb. 9, 1885..	377.42 8.80
65	José A. Portuondo.....	1,500.00	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	386.22 5.17
84	John A. Machado.....	407.72 11.21	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	5.29 9.37
52	José M. Macias.....	11,115.01 115.01	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	9.59 1.51
49	Magdalena F. de Mora.....	152.32 4.18	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	65.69 23.20
50	Fausto Mora and A. Arango.	275.96 7.69	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 30, 1884, to Feb. 9, 1885..	23.71 51
45	Cristobal Madan.....	1,887.15 51.88	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	29.42 28.74
69	John C. Rozas.....	683.20 18.78	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	29.42 68
127	Miguel Zaldivar.....	846.35 23.27	From Feb. 18, 1884, to Feb. 9, 1885.. From Apr. 9, 1884, to Feb. 9, 1885..	29.42 68
	Amounts forwarded....	70,448.82		14,234.81

*Ratable proportion of \$14,485.50, etc.—Continued.*

No.	Claimant.	Amount reserved, as shown on Exhibit A.	Duration of reserve.	Proportion.	
	Amount forward .....	\$70,448.82			\$14,234.81
73	Ramon de Rivas y Lamar..	3,090.79 84.97	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	\$104.95 2.47	
39	Alfred G. Compton, executor	2,734.24 75.17	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	92.84 2.19	107.42
115	Manual Antonio Montejó ..	190.32 5.23	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	6.46 .15	95.03
138	Francisco Bellido de Luna.	146.40 4.02	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	4.97 .12	6.61
106	John E. Powers .....	195.20 5.36	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	6.62 .16	5.09
136	Luisa M de Zenea .....	142.62 3.92	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	4.84 .12	6.78
117	Juan San Pedro .....	53.68 1.47	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	1.82 .04	4.96
25	Ynocencio Casanova .....	292.80 8.05	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	9.94 .24	1.86
8	William Montgomery .....	48.80 1.34	From Feb. 18, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	1.66 .04	10.18
88	Waydell & Co .....	75.97 2.09	From Feb. 20, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	2.57 .06	1.70
89	William A. Jones.....	244.00 6.71	From Feb. 20, 1884, to Feb. 9, 1885 From Apr. 9, 1884, to Feb. 9, 1885	8.24 .19	2.63
		77,861.97			8.43
					14,485.50

[See Claims against Mexico, Gen. Index.]

**FIFTY-SIXTH CONGRESS, SECOND SESSION.**

**December 19, 1900.**

[Senate Report No. 1758.]

Mr. Cullom, from the Committee on Foreign Relations, submitted the following report:

This bill provides for the refund to the Mexican Government of \$171,899.64, being the amount paid by the said Republic of Mexico to the Government of the United States, and by this Government disbursed to Benjamin Weil, on account of an award made in favor of said Weil by the United States and Mexican mixed commission.

Attached to the report on Senate bill 4341, marked "A," is a letter from the Secretary of State in answer to an inquiry, which states in reference to this claim:

*Benjamin Weil.*

Award in Mexican gold.....	\$487, 810. 68
Award in United States currency.....	479, 975. 95
Over appropriation by Congress.....	70. 96
Total gross award.....	480, 046. 91
Pro rata share of the expenses of the commission.....	20, 323. 50
Net award.....	459, 723. 41
Paid to claimants.....	171, 889. 64
Refunded to Mexico.....	287, 833. 77

The amount stated in the bill in the Weil case is correct.

This was a claim presented by this Government in behalf of its citizen, Benjamin Weil, against the Republic of Mexico for certain cotton seized from the claimant by Mexican troops, which claim (with the La Abra and other claims) was referred to a United States and Mexican commission, created under the convention of July 4, 1868. An award was made by this commission and the award paid by the Mexican Government. Prior to the payment of this award by the Republic of Mexico, and after it was paid, and before any part of it was disbursed by the United States, the Mexican Government had protested against

any part of this money being paid to the claimant and had insisted that it was fraudulent. Conclusive evidence that this was a fraudulent claim was later found, and the Court of Claims, whose decision has become final by failure to perfect an appeal, under the jurisdiction conferred upon that court by the act of Congress of December 28, 1892, handed down an opinion January 3, 1900, declaring that this claim was procured by fraud, effectuated by means of false swearing and other false and fraudulent practices on the part of said Benjamin Weil.

Of the total amount of \$487,810.68, awarded by the commission, this Government disbursed to Benjamin Weil, his heirs or assigns, \$171,889.64, and the balance of the net award has recently been returned to the Mexican Government, as shown by message of the President (Fifty-sixth Congress, second session, Document No. 182)—

I transmit herewith a report from the Secretary of State, with accompanying papers, showing the return to the Government of Mexico of the unexpended balance of the award in favor of Benjamin Weil, made by the United States and Mexican Claims Commission established under the convention of July 4, 1868.

WILLIAM MCKINLEY.

a copy of which document is attached to this report, marked "A."

This bill therefore provides for the return to the Republic of Mexico the amount of money which the United States distributed to Benjamin Weil under this award, since declared fraudulent.

The same proposition is involved here as was involved in the report on Senate bill 4341 (La Abra claim), and for the reasons stated in that report we would recommend the passage of the bill.

[See Claims against Mexico, Gen. Index.]

**FIFTY-SIXTH CONGRESS, SECOND SESSION.**

**December 19, 1900.**

[Senate Report No. 1759.]

Mr. Cullom, from the Committee on Foreign Relations, submitted the following report:

This bill provides for the refund to the Mexican Government of "\$280,011.24, being," as stated in the bill, "the amount paid by the said Republic of Mexico to the Government of the United States, and by the said latter Government disbursed to the La Abra Silver Mining Company."

Attached to this report, marked "A," is a letter from the Secretary of State, in answer to an inquiry from me, which states, in reference to this claim:

*La Abra Silver Mining Company.*

Award in Mexican gold.....	\$683,041.32
Award in United States currency.....	872,070.99
Over appropriation by Congress .....	99.35
Total gross award .....	672 179.34
Pro rata share of the expenses of the commission.....	28,457.20
Net award .....	643,713.14
Paid to claimants.....	240,083.08
Refunded to Mexico.....	403,030.08

The amount stated in the La Abra case is not correct. It should be \$240,683.06.

The bill has therefore been amended, in accordance with the report of the Secretary of State, by striking out the figures \$280,011.24 and substituting therefor the figures \$240,683.06.

This was a claim presented by this Government on behalf of its citizen the La Abra Silver Mining Company to the Republic of Mexico for damages suffered by the said La Abra Silver Mining Company on account of property of the said La Abra Mining Company destroyed and interfered with by the officials and citizens of the Republic of Mexico prior to the year 1868. This claim, together with a number of other claims, was referred to the United States and Mexican mixed com-

mission, created under the convention of July 4, 1868, and an award was made by that commission in December, 1878, of \$683,041.32 Mexican gold, which award was paid in several installments by the Republic of Mexico. Of this sum so paid by the Republic of Mexico there has been distributed by the United States to the La Abra Silver Mining Company \$240,683.06.

The Mexican Government had from the beginning insisted that this claim was fraudulent, and absolute evidence of that fact was later found, which proved conclusively that the claim was false, fraudulent, and fictitious.

As shown by the following paragraph of the President's last message, there has been returned to the Republic of Mexico the sum of \$403,030.08, being the unexpended balance of the said award remaining in the possession of the United States:

*Message of December 3, 1900.*

Pursuant to the declaration of the Supreme Court that the awards of the late joint commission in the La Abra and Weill cases were obtained through fraud, the sum awarded in the first case, \$403,030.08, has been returned to Mexico, and the amount of the Weill award will be returned in like manner.

After years of litigation over this claim the Supreme Court finally declared it fraudulent. (175 U. S., 423.)

The question arises here:

Is this Government liable to a foreign government when it presents a claim, on behalf of one of its citizens, to the foreign government, and, after the claim has been paid by the foreign government and disbursed by this Government, it is found to be fraudulent? Shall this Government return the amount which it so receives and disburses?

We are of the opinion that it must, because—

First. The Supreme Court said in *Frelinghuysen v. Key* (110 U. S. 63 et seq.), one of the cases involving these claims:

Each Government must rely upon the honor and good faith of the other for protection, as far as possible, from fraud and imposition by the individual claimants, \* \* \* and the presentation by a citizen of a fraudulent claim is an *imposition on his own Government*, and when that Government discovers it has been made an instrument of wrong it would be not only its right, but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect, if any there had been.

This was a very able opinion by Mr. Justice Waite, and from it it will be observed that the Republic of Mexico had a perfect right to rely upon our good faith in presenting a claim on behalf of one of our citizens, and if that claim was found to be fraudulent it would be our duty to make reparation. This we have partly done, as shown by the message of the President, and it would seem to be as much our duty to return the balance which we have wrongfully paid to the claimants as it was our duty to return the balance which remained unpaid in our hands.

Second. The Supreme Court has passed upon this very claim in a recent decision (*La Abra Silver Mining Company v. United States*, 175 U. S., 423; opinion by Mr. Justice Harlan). In the course of that opinion the justice said, at page 458:

The money in the hands of the Secretary of State was paid to the United States by Mexico pursuant to the award of the commission. That tribunal dealt only with the two Governments, had no relations with claimants, and could take cognizance only of claims presented by or through the respective Governments. \* \* \* While the claims of individual citizens presented by their respective Governments were to be considered by the commission in determining amounts, the whole purpose of the

convention was to ascertain how much was due from one Government to the other on account of the demands of their respective citizens. And "each Government when it entered into the compact under which the awards were made relied on the honor and good faith of the other for protection so far as possible against frauds and impositions by the individual claimants." (*Frelinghuysen v. Key.*) As between the United States and Mexico, indeed as between the United States and American claimants, the money received from Mexico under the award of the commission was in strict law the property of the United States, and no claimant could assert or enforce any interest in it so long as the Government legally withheld it from distribution.

When the La Abra Company asked the intervention of the United States, it did so on the condition imposed by the principles of comity, recognized by all civilized nations, that it would act in entire good faith, and not put the Government, whose aid it sought, in the attitude of asserting against the Mexican Republic a fraudulent or fictitious claim; consequently the United States, under its duty to that Republic, was required to withhold any sum awarded and paid on account of the company's claims if it appeared that such claim was of that character. As between the United States and the company, the honesty or genuineness of the latter's claim was open to inquiry in some appropriate mode for the purpose of fair dealing with the Government against which such claim was made through the United States. We so adjudged in the Key Case. The United States assumed the responsibility of presenting the La Abra claim and made it its own in seeking redress from the Mexican Republic.

It would seem clear from this language that this Government would surely be responsible to a foreign government for a claim presented by this Government to a foreign government, and by that government paid, which afterwards proved to be fraudulent, because this Government, in assuming the responsibility of presenting the claim, made it its own.

Third. The record of these claims (Executive Document, Forty-eighth Congress, No. 103, House) shows that the Republic of Mexico, even after it had paid the awards, protested to the officers of this Government against the money being distributed and insisted that the claim was fraudulent and that the evidence offered before the commission was perjured.

Inasmuch, therefore, as it would seem not only just and equitable, but legal as well, that we should refund this balance to the Mexican Government, and inasmuch as we have already returned to that Government \$403,030.08, thereby recognizing our liability, the committee recommends the passage of the bill as amended.

## A.

DEPARTMENT OF STATE,  
Washington, December 14, 1900.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant relative to the awards made by the United States and Mexican Claims Commission in the cases of the La Abra Mining Company and Benjamin Weil. The following statement will give you the information you request:

*La Abra Silver Mining Company.*

Award in Mexican gold.....	\$683,041.32
Award in United States currency.....	672,070.99
Overappropriation by Congress.....	99.35
Total gross award.....	672,170.34
Pro rata share of the expenses of the commission.....	28,457.20
Net award.....	643,713.14
Paid to claimants.....	240,683.06
Refunded to Mexico.....	403,030.08

*Benjamin Weil.*

Award in Mexican gold.....	\$487,810.68
Award in United States currency.....	479,975.95
Overappropriation by Congress.....	70.96
Total gross award .....	480,046.91
Pro rata share of the expenses of the commission .....	20,323.50
Net award .....	459,723.41
Paid to claimants.....	171,889.64
Refunded to Mexico.....	287,833.77

The amount stated in the bill in the Weil case is correct; in the La Abra case it is not correct. It should be \$240,683.06.

I have the honor to be, sir, your obedient servant,

JOHN HAY.

Hon. S. M. CULLOM,  
*United States Senate.*



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CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST  
THE UNITED STATES.

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## CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST THE UNITED STATES.

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### THIRTEENTH CONGRESS, SECOND SESSION.

March 11, 1814.

On petition of Stephen Glover, Mr. Bibb reported:

That in the month of September last the Swedish brig *Margaretta* arrived at Bath, in the district of Maine, from St. Johns, in the province of New Brunswick, laden with merchandise which had been previously imported from England; that the vessel and cargo were seized and libeled in the district court of the United States for a violation of the nonimportation laws; and that bonds having been given for the appraised value, the said cargo has been restored to the claimants.

No application has been made for relief to the Treasury Department.

Under these circumstances, the petitioner, in behalf of himself and others interested in the said merchandise, solicit the interposition of Congress.

The case being now in a course of judicial investigation, and the Secretary of the Treasury having competent authority to afford relief, if it shall appear that there has been no intention of fraud or willful negligence, the committee are of the opinion that it is expedient to legislate upon the subject, and they recommend the adoption of the following resolution:

*Resolved*, That the petitioner have leave to withdraw his petition, with the accompanying documents.

(Leg. Jour., vol. 5, p. 457.)

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March 11, 1814.

On the petition of Daniel Hastings and others, Mr. Bibb reported as follows:

That the petitioners represent that they are the owners of sundry goods, wares, and merchandise, the cargo of the brig *Hector*, which were purchased in September and October, 1810; that owing to accidental circumstances the said goods were not shipped when they might have been legally imported; that pursuant to orders subsequently given they were put on board the brig *Hector* and cleared out for Amelia Island; that when on the coast of the United States the said vessel was found to be so leaky and short of provisions as to render a change in her destination indispensable; and that therefore the captain thereupon proceeded with the vessel and the cargo to Bath, in the district of Maine, where they arrived on the 3d of May, 1812.

It appears that the vessel and cargo were seized by the collector for a violation of the nonimportation laws, and that they have been restored to the claimants on their giving bonds for a sum barely exceeding the amount of duties which at their present rate would be payable.

It also appears that a decision has been against the claimants by the district and confirmed by the circuit court of the United States held at Boston, and that the Secretary of the Treasury has refused to grant any relief.

The committee are not aware of any similar case in which Congress have interposed after a condemnation by a judicial tribunal; and many instances are to be found in which relief has been refused. They perceive no peculiar circumstances in this case which would authorize a departure from the former decisions; and therefore recommend the adoption of the following resolution:

*Resolved*, That the petitioners have leave to withdraw their petition, with the accompanying documents.

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March 14, 1814.

On petition of Justin and Elias Lyman, Mr. Bibb, of Georgia, reported:

That without recapitulating the variety of circumstances which are alleged in the petition, they deem it sufficient to remark that the petitioners claim to be the owners of a cargo of coffee which was imported into Newport, in the State of Rhode Island, in August, 1813, and which was seized by the collector for a breach of the nonimportation laws.

They ask of Congress to order the discontinuance of judicial proceedings against them. No application has been made for relief to the Treasury Department.

The committee are of opinion that if Congress shall undertake to decide on each of the numerous cases of violations of the nonimportation laws which have occurred and which may continue to occur, the inevitable consequence will be either that their decision will be made without due investigation or that the time which should be devoted to national concerns will be employed in the examination of claims the decision of which properly belongs to another department. The power to remit fines, penalties, and forfeitures incurred under the revenue laws has, under all administrations of the Government, for the purpose of uniformity of decision, been vested in the Treasury Department; and it is believed that neither in this or any other country have the decisions of any tribunal been more correct or more satisfactory to the parties concerned. The same power exists under the nonimportation laws, and the committee are of opinion that to the same tribunal applications for relief should be referred.

They therefore recommend the adoption of the following resolution:

*Resolved*, That the petitioners have leave to withdraw their petition and the accompanying documents.

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March 14, 1814.

On petition of John S. Trott and Morton Blake, Mr. Bibb, of Georgia, reported:

That the petitioners represent that they are the joint owners of the brig *America*; that the said vessel sailed from Boston in April, 1812,

with a cargo of cotton, for Liverpool; that, pursuant to their orders, the proceeds of said cargo were invested in British merchandise; that the said merchandise was put on board the said vessel, and cleared out for Amelia Island on the 5th of June in the same year; that on her passage the captain was informed of the declaration of war, and proceeded to Bath, in the district of Maine, where the vessel arrived and was seized by the collector on the 22d of July.

It appears that the cargo consisted principally of articles which, at the time of importation, were not subject to duty; that it cost in England \$6,575.11; that the duties now authorized by law would amount to at least \$2,500; and that the vessel and cargo have been restored to the claimants on their giving bonds for \$1,857.60. It also appears that application has been made to the Treasury Department for relief, and that it has been refused. With this view of the case, the committee are of opinion that there are no peculiar circumstances which call for the interposition of Congress; and that generally it would be improper and impolitic to revise, by an act of legislation, a decision made by an established and a competent tribunal.

They therefore recommend the adoption of the following resolution:

*Resolved*, That the petitioners have leave to withdraw their petition and the accompanying documents.

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[See below.]

**SEVENTEENTH CONGRESS, FIRST SESSION.**

**March 6, 1822.**

[Senate Report No. 55.]

The Committee on Foreign Relations, to whom was referred the petition of Francis Henderson and family, report:

That the committee be discharged from the further consideration of the petition, and that the same be referred to the Committee of Claims.

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[See above.]

**EIGHTEENTH CONGRESS, FIRST SESSION.**

**December 31, 1823.**

[Senate Report No. 9.]

Mr. Barbour, from the Committee on Foreign Relations, to whom was referred the petition of Francis Henderson, on behalf of himself and family, the legal representatives of the late Lieut. Col. John Laurens, of South Carolina, submitted the following report:

The facts set forth in the petition have been verified to the satisfaction of the committee, and are substantially as follows:

Lieut. Col. John Laurens, the ancestor whose services, civil and military, occupy a brilliant page in the history of the Revolution, entered the Army of the United States, as aid to the commander in

chief, in August, 1777. In this situation he displayed a zeal, courage, and devotedness not surpassed by any of his compatriots. He conciliated the esteem of his commander and of his brother soldiers, and for his distinguished services frequently received the thanks of Congress. In 1780 he had acquired so much of the confidence of his country as to induce Congress, unanimously, to appoint him a special minister to France on a most important service. Such was his success in this mission as again to call forth the public thanks of that body. He returned to this country in September, 1781, and at his special request Congress permitted him to join the Army, then conducting the siege of Yorktown, in Virginia, where fresh laurels awaited him. He finally fell, on the 27th of August, 1782, in the lap of honor, fighting the battles of his country. His death was a national misfortune. He left an orphan daughter to the gratitude and to the protection of his country. A disinterestedness, even to carelessness, was a distinguished trait among his other qualities. Hence, for his long and important services and the expenses attending the same, he seems neither to have kept an account nor to have received any advances, except a small sum, to which hereafter a more particular reference will be made.

The father dead, his only child an infant and an orphan, and the grandfather, Henry Laurens, in captivity in England, there was no one to assert her claims.

Eventually the grandfather returned from Europe, and in 1784, as the guardian of the child, presented her case to Congress, who came to the following resolution:

*"Resolved, That in settling the accounts of the late Lieut. Col. John Laurens, as special minister to the Court of Versailles, he be allowed the same pay that was given at this period to the ministers plenipotentiary of the United States at foreign courts from the time of his appointment to that embassy until his return, and that the balance remaining due for his services as minister be paid to his representatives."*

This resolution was not acted upon till 1790. The accounts of the father, Colonel Laurens, in both characters, as colonel and as minister, were settled. But it is objected by his legal representative, the petitioner (who intermarried with Francis Eleanor Laurens, the only child of Col. John Laurens), and, in the opinion of the committee, justly, that in the settlement no allowance was made for the expenses of Colonel Laurens while on his foreign mission, although at that time no advances being made our foreign ministers as an outfit, it was the usage of the Government to pay their expenses; and more especially, too, as Congress had expressly directed that in the adjustment of the account his compensation should be the same as that of other ministers.

No account having been kept by Colonel Laurens of the expenses, the committee have, of course, no certain data by which to ascertain the amount, in the absence of which they have been compelled to resort to other circumstances for the purpose of arriving at any satisfactory result. These are, first, that it is in proof Colonel Laurens paid his own expenses as well as those of his suite. Second, he took up at Nantes, on the credit of his father, £1,000 sterling, equal to \$4,444.44. Third, he received from Dr. Franklin, the then resident minister in France, \$2,171.42; and, fourth, on his return to the United States he received, at Boston, where he landed, \$720 from the superintendent of finance, to enable him to join the Army before Yorktown,

in Virginia. The committee therefore have assumed these sums as furnishing the probable amount of his expenses, in which they have the more readily acquiesced, as it was about equal to the sum, in proportion to the time, allowed Silas Deane, a contemporary minister at that court, for his expenses.

The claim for \$101.85 results from the improper application of the scale of depreciation to the item for rations in the military account of Colonel Laurens, who, unconnected with any State regiment, would be deprived of the compensation which his brother officers received if it be not awarded by Congress, and therefore the committee deemed it reasonable to allow it. The claim for \$104.70 is obviously just, as it arises from an omission in extending and adding up the account. Uniting these two sums with his diplomatic expenses produces an amount of \$7,542.41, which, with interest at 5 per cent from the 5th of September, 1781, the day of his return from Europe, is equal to \$23,500. In allowing the charge for interest from the above period the committee have been guided by the resolution of Congress above referred to and the report on which it was founded, which directs that the child of Colonel Laurens should receive whatever was in equity and justice due the father; and for the further reason that the grandfather, in fixing the portion of the daughter of John Laurens by his will, deducts therefrom the advances made the son, of which the sum taken up by him at Nantes is a part, with interest from the time of such advances.

The committee, in reporting a bill directing the money to be paid to Francis Henderson, jr., the only grandchild of Colonel Laurens, has, independently of its fitness, conformed to the consent of Francis Henderson, the elder, signified by a letter from him and among the documents.

(Leg. Jour., pp. 66, 67).

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## TWENTIETH CONGRESS, SECOND SESSION.

December 30, 1828.

On petition of George T. Beyer, Mr. Sanford reported:

That the petitioner in his said petition sets forth that he was the owner of 8 pipes of gin, a chest of cologne water, and of 14 boxes of Dutch cheese, of the value of \$3,336, all of which articles, in the month of January, 1815, were taken from closet under the lock of the custom-house, at the port of St. Marys, in Georgia, by the British forces then at that place.

That conceiving himself entitled to compensation for this loss, under the first article of the treaty of Ghent and of the convention of London, he preferred a memorial setting forth all the facts of his case to the board of commissioners appointed under that treaty and convention for making that compensation, but that this board rejected his said memorial.

The petitioner therefore prays to be relieved in such way as Congress may deem meet.

The committee can not sanction the doctrine that a government is bound to indemnify its own citizens for all the losses that they may suffer from acts of the public enemy in the course of a flagrant war, nor are they prepared to admit that it would be either just or expedient to revise the proceedings of any forum regularly constituted

and fully authorized to decide finally all the questions duly brought before it for the purpose of reversing in effect such decisions. By the board of commissioners appointed under the treaty of Ghent and the convention of London the case of the petitioner was clearly cognizable. That the board has finally papered upon the case and rejected it. This committee would probably have concurred in that opinion, but they believe that it would be productive of much public mischief to reexamine it now. They therefore recommend to the Senate the adoption of the following resolution:

“*Resolved*, That the petition of G. T. Beyer, of Pennsylvania, praying to be indemnified for certain goods taken from him by the British forces in January, 1815, at the port of St. Marys, in Georgia, be rejected.”

(Annals, 20th Cong., 2d sess., p. 55.)

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[See p. 372.]

#### TWENTY-THIRD CONGRESS, SECOND SESSION.

January 21, 1835.

[Senate Report No. 65.]

Mr. Porter made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Mary O'Sullivan, report:

The petitioner claims remuneration from the United States for the acts of one of their consular agents in South America, on the following facts:

In the year 1822 the husband of the petitioner, John O'Sullivan, who, it is alleged, was a native citizen of the United States, made a voyage to the west coast of America, as master and supercargo of a ship called the *Canton*, of New York, in the cargo of which he was interested. During this voyage, and while at the port of Guyaquil, he met there the brig *Dick*, formerly of Baltimore, which had just reached the said port from that of Callao. This brig was owned by one Bela, a naturalized citizen of the United States, and commanded by a certain Coggershall, a native citizen. Her previous voyage had been from Cadiz and Gibraltar to Callao; and it is proved that Bela had given her that destination before he left New York, and that he sailed from thence to meet her at Callao.

O'Sullivan while at Guyaquil purchased the brig from Bela for the sum of \$13,700, took a bill of sale of her, and possession, in pursuance thereof, was delivered to him; but it appearing that she had been registered at Baltimore as owned and commanded by one Furlong, and had been long absent from the United States, O'Sullivan deposited on board the United States ship the *Franklin* the purchase money; and by contract made the payment of it to Bela depend on the future approbation of a commercial house in New York, with which he (O'Sullivan) was connected.

Having, however, obtained possession of the vessel, he caused her to be refitted and repaired, and placing a new commander on board, he directed her to Rio Janeiro, and from thence to Buenos Ayres, to take a cargo of hides and proceed to Cadiz.

Pursuant to these directions, the brig sailed for and arrived at Buenos Ayres. On her arrival there she was seized by the commercial agent of the United States, Mr. Forbes, and the master and supercargo required to give bond that she should immediately, and by the most direct route, proceed to the United States. These persons appear to have resisted this demand of the agent as far as was practicable, and they endeavored if possible to procure such a modification of it as would enable them to proceed on the voyage to Cadiz; tendering his surety, to his satisfaction, that from thence the vessel should sail to some port of the United States, there to abide any prosecution which might be instituted. These attempts were, however, unavailing. Mr. Forbes remained inflexible in his decision. The vessel was ordered home by the most direct route, and the greater part of a cargo of hides, which had been purchased, were resold.

The agent of the United States retained the register, and forwarded it, together with his charges against the brig, to the Secretary of the Treasury by another vessel. No proceedings, however, on the part of the Government resulted from them. The brig, after remaining for some time in the port of New York, was libeled for seamen's wages and on a contract of bottomry and by a decree of a court of admiralty directed to be sold. O'Sullivan, who had proceeded to Cadiz in the ship *Canton*, and waited there for some time the arrival of the *Dick* with the cargo he had directed to be purchased, at last received information of the measures which the United States agent had adopted in relation to his vessel. On the receipt of this intelligence he returned to New York, and on reaching there found she was condemned and advertised to be sold. At the marshal's sale he again became her purchaser, and after some time and trouble obtained a register for her in his own name, by orders from the Comptroller of the Treasury.

After refitting the vessel, O'Sullivan made a voyage in her to Europe, and from thence sailed for the west coast of South America. On this voyage he was shipwrecked, and his life was lost, together with the ship and cargo.

The agent, Mr. Forbes, in his dispatch to the Department of State, assigns as his reasons for seizing the brig—

First. That several American citizens had told him that, two years previous, the brig *Dick* had come to Montevideo, destined for Buenos Ayres, and that it was matter of general notoriety there that she was "undoubtedly the property of a Spanish subject, although navigated under the documents and flag of the United States."

That six or eight weeks antecedent to the seizure, the chief of the police, by order of the Government, announced to the public that there were three well-armed piratical vessels cruising in the Pacific, and that one of them was the brig *Dick*.

That, on examining the register of the vessel, he discovered that E. Furlong appeared to be the only owner and master, and "that he could not find the link in the chain of ownership."

That there was a certificate from the captain of the port at Montevideo that an impediment of the owner and captain, William Furlong, made it necessary that Thomas Humphreys should take command of the brig; that this circumstance confirmed a story he had previously heard, of a quarrel between Furlong and the real owner.

That the supercargo at first refused to produce his bill of sale, but, when threatened with seizure, did present a singular one, by which it appeared that O'Sullivan, the pretended buyer, was so entirely

destitute of confidence in the right to sell of the pretended seller that he would only deposit the money on board the *Franklin* to be paid at New York on the Spaniard "proving to the satisfaction of O'Sullivan's agent his right of ownership.

On these facts, it becomes material to inquire whether the petitioner was the bona fide owner of the brig, and whether she had been used by him or others for purposes which subjected her to condemnation.

On this point, there seems not to exist any difficulty. The evidence is indeed not very complete as to the employment of the brig previous to the purchase of her by the husband of the petitioner, but there is nothing to excite a suspicion that she was not used for a lawful purpose; and the evidence, so far as it goes, negatives all idea of her having been engaged in illicit trade. She was built in Baltimore in December, 1819, and in 1821 we find her owned by one Bela, a naturalized citizen of the United States, and employed in navigating the seas of South America in a legitimate commerce. In the year 1822 she became the property of O'Sullivan, by a contract which is fully proved, and for a purely commercial purpose, in which purpose she was engaged when seized by the agent of the United States. There is not the least reason to believe that the transaction was not fair and legal, and such as is quite common to American enterprise.

This case was referred last year to the Secretary of the Treasury, who has made a report unfavorable to the claim of the petitioner. This report the committee have examined. The Secretary rests his objections on the grounds—

That the responsibility of the Government is limited to acts which exhibit gross negligence or malfeasance on the part of the agent, and that even in such cases the proof must be clear, and the liability established by suit against the agent before recourse is had on the National Treasury.

That no attempt has been made to fix liability by law, nor no reason given why it was omitted shown, and under such circumstances, together with the fact that the agent is now dead, and no remedy on his estate, further evidence ought to be adduced to show the agent had not reasonable cause to suspect the character of the vessel.

It has certainly been the most common course for individuals claiming redress from Government for the acts of its agents to resort to a court of law in the first instance and fix their liability. Whether this be the safest course for Government, and whether it be one which in ordinary cases should be resorted to before application is made to Congress, need not be discussed, as, admitting the rule to the whole extent put forward by the Secretary, there are exceptions growing out of it which, in the opinion of the committee, can not be disregarded. And this case, in their opinion, fairly presents one of these exceptions. In little more than a year after the injury complained of, the husband of the petitioner and father of the children who are interested in the success of the present demand, perished by shipwreck on the southern coast of this continent. His wife at that time was in Europe, where she had accompanied him from the United States in prosecution of a voyage which contemplated first going there, and thence to the South Seas. She appears to have been left in humble circumstances, with a large family of children; and it is not surprising that, so situated, she should not have prosecuted her case with the vigor and success which might have attended the efforts of those who are more favorably circumstanced; but, in the opinion of the committee, a complete exception is established by the fact that no opportunity

was presented to her to bring suit in the United States against Mr. Forbes. He remained at Buenos Ayres until his death; and there is no obligation on an American citizen to follow public agents into a foreign country, where they are placed by the Government, in order that a liability be established for which that Government is ultimately to be responsible. The objections to such a course are many, strong, and so obvious that it is deemed unnecessary to set them out in detail.

The remaining and most important question is, whether the circumstances under which the vessel was seized were such as furnished the officer making it with reasonable cause to take her into possession and send her to the United States. The Secretary of the Treasury conveys, by implication, his opinion that there was, in saying that further evidence ought to be adduced to show the agent had not reasonable cause to suspect the character of the vessel. The committee have looked into the evidence which is already furnished; they have given full effect and credit to the agent's own statement, and they are unable to view the transaction in the same light in which it appears to have struck the mind of the Secretary. If, indeed, a commercial agent, or any one else who has power confided to him to be exercised on a sound discretion, is justified in accepting rumor and suspicion in place of proof, then the agent had probable cause; otherwise, he had not. The letter of Mr. Forbes has been already set out. With a zeal for the character and interests of his country which can not but be commended, it would seem that he suffered his feelings to get the better of his judgment. An American citizen, in whatever part of the world he goes, holds his property, at least against his own Government or its officers, by constitutional protections, which place it beyond injury from general rumor and the suspicion which it engenders. And yet, upon such evidence, if it deserves that name, did the agent consider himself required to seize and send home for condemnation the vessel in question. After having heard so many things said about her, he states in his letter to the Secretary of State that he was greatly surprised indeed to see the brig come to Buenos Ayres. If the agent had not already permitted his mind to be completely pre-occupied by the rumors afloat, he might and ought to have drawn from this circumstance, not surprise at the audacity of her owners, but a doubt of the truth of these rumors. This view of the matter does not, however, appear to have once occurred to him; and he accordingly proceeded, with the zeal of a man who knew there was guilt, to seek out the evidence by which his convictions might be justified.

In this state of mind, he drew from the circumstance that O'Sullivan had made the payment of the purchase money depend on the vender making a good title proof that the whole transaction was stimulated; that the one (in his language) was a pretended seller and the other a pretended buyer; while, to your committee, nothing arising from internal evidence could more clearly exhibit the good faith of the purchaser and the reality of the transaction than such a stipulation, for, had fraud and concealment been his object, everything which might exhibit distrust on his part would have been suppressed, and the contract, in point of form, would have been unconditional and complete.

When, in addition to this circumstance, it is recollected that the agent had ample means to satisfy himself that the vessel accused of piracy had been a considerable time at Rio Janeiro, that she was just from thence to take in a valuable cargo of hides prepared for her at

Buenos Ayres, and that she was assigned to a respectable house at the latter place, it would seem that, without extreme prepossession of his mind, he must have been convinced that the transfer was bona fide, and that the charge of piracy was unfounded.

It was the more important for the agent to examine closely the fact as to a change of ownership; for, supposing it to have taken place, he was exercising a very doubtful authority in seizing the vessel in the hands of an innocent purchaser. But, admitting that he was authorized to do so, the committee repeat that they see no evidence on which that forfeiture could be pronounced. And as the agent who was interested to support the strong measure he resorted to never furnished to the Government any further proof than that laid before the committee, the conclusion is that none such exists.

It is true there was an apparent irregularity in Bela being the owner of the vessel and the register standing in the name of Furlong. But that irregularity amounted to nothing more than rendering Bela's title insecure and was not a cause of seizure, unless Bela was a foreigner and the register was suffered to continue in the name of Furlong to give a national character to the vessel forbidden by law. On this point the Comptroller of the Treasury reports that there is no proof to justify the suspicion of the agent that the vessel was Spanish property. And the committee add there is strong proof she was not. First, in the evidence of Coggershall, who swears that Bela was a naturalized citizen of the United States; and, second, in the proof to be derived from the transaction between himself and O'Sullivan. By the terms of the bill of sale, it is covenanted that the purchase money is to be paid by the house of Le Roy, Bayard & Co., of New York, on Bela's proving "that he held a legal title, as a citizen of the United States of America, to the American brig *Dick*." It is inconceivable that any man would have delivered a valuable vessel to a purchaser in a foreign country upon such a condition unless he felt assured that he was able to comply with it.

The committee report a bill in favor of the petitioner, such as has twice been reported to the House of Representatives by committees of that body, in relation to this claim.

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[See p. 368.]

#### **TWENTY-FOURTH CONGRESS, FIRST SESSION.**

**December 31, 1835.**

[Senate Report No. 36.]

Mr. Porter made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Mary O'Sullivan, report:

[See Senate Report 65, Twenty-third Congress, second session, p. 368.]

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**January 28, 1836.**

[Senate Report No. 99.]

Mr. King of Georgia made the following report:

The Committee on Foreign Relations, to whom were referred resolutions by the legislature of Louisiana, requesting that measures be

taken by Congress to settle conflicting claims to land in the county of Feliciana, in said State, ask leave to report:

That they have considered the subject referred to them, with an anxious desire to relieve the citizens of Louisiana from those evils which have been made an object of solicitude by the legislature of that State.

The committee believe that the unsettled state of the title to large tracts of land claimed under grants from the Spanish Government, and lying west of the Perdido and east of the Mississippi, conflicts with the interests of the United States in the sale of the public lands and retards the improvement and settlement of that part of the country. The object of the resolutions of the State of Louisiana is therefore recommended to the consideration of Congress, not only as one of deep concern to the people of that State, but is also one of some interest to the Government of the Union.

The conflicting claims which it is the object of Louisiana to have settled in behalf of her citizens grow out of the controverted extent of Louisiana as ceded by his Catholic Majesty to France by a secret treaty of San Ildefonso, dated the 1st of October, 1800, and by France to the United States in the year 1803. By the said treaty of San Ildefonso his Catholic Majesty retroceded to the French Republic "the colony or province of Louisiana," with the same extent that it then had in the hands of Spain, and that it had when France possessed it; and the said province was ceded under the same description by the French Republic to the United States in 1803.

Shortly after the cession of Louisiana to the United States a controversy arose with Spain as to the extent of that province. This controversy gave rise to a protracted negotiation between the two countries, which was suspended, but not terminated, by the forcible occupation of the disputed territory by the United States in 1810, and brought to a final close by the treaty of the 22d of February, 1819, by which the Floridas, including all claims to the disputed territory, were ceded to the United States. By the eighth article of the said treaty it was stipulated between the high contracting parties that all grants of land made by the King of Spain, or by his lawful authority, before the 24th of January, 1818, in the territory ceded by the treaty, should remain confirmed and acknowledged to the persons in possession of the land, to the same extent that the same grants would have been valid if the ceded territories had remained under the dominion of his Catholic Majesty.

Pending the controversy between the United States and Spain as to the actual extent of Louisiana, and previous to the occupation of the disputed territory by the former in 1810, Spain (remaining in possession of the country) made numerous grants of land between the Mississippi and Perdido, which are now asserted against the United States and those who have purchased from them the lands covered by the said Spanish grants. It is insisted by the grantees that Spain had good title to the property at the time of the grants, and that their rights have been effectually saved by the eighth article of the treaty aforesaid.

On the other hand, it has been insisted by the Government of the United States that the territory in question was included in the Louisiana cession, and that Spain, having parted with the soil and jurisdiction by the treaty of San Ildefonso, had no right to make the grants now insisted on by the grantees.

The committee do not purpose to give or intimate any opinion upon

the merits of a controversy of long standing with Spain, and which is still continued with the grantees of that power. It is obvious enough that if the conditions of the grants have been complied with, and Spain had a right to make them, they should be confirmed. The question is, however, a judicial one, dependent upon facts and the construction of treaties. Congress is not called on to decide upon the validity of the grants, but is expected to adopt some measure to have their validity judicially tested and conflicting titles to soil speedily settled. This the committee believe it is the duty of Congress to do, if the object can be accomplished without injury to the interests of the United States, and they have given a brief notice of the nature of the subject and the origin of the conflicting titles to be settled, that the Senate may judge of the expediency of legislation and understandingly direct its form, if legislation be deemed expedient.

In concluding to recommend legislation the committee have considered the subject—

First. In reference to the interest of the United States as a party to the contested titles.

Second. As a measure due to the State of Louisiana and its citizens.

On the first point the committee do not conceive it to be the interest of the United States, as a landed proprietor, to delay the final settlement of litigated claims to any part of the public domain. If the land be made available the claims of individuals must be met, for the exemption of the Government from suit does not extend to its grantees, whose titles are guaranteed, and who may thus be made the nominal whilst the Government becomes the substantial party to the suit. The advantages to the Government, however, of providing for suits against it before suits could be otherwise instituted would not be so obvious but for the objections to purchase lands of doubtful title from the Government for the purposes of settlement and cultivation; which leads the committee to consider the legislation they recommend as a measure due to Louisiana and its citizens.

Whilst the exclusive right of the Government to the public lands in the several States where situated is not to be disputed, or the right of exclusive control over it brought into question, on that very account the generosity of Congress should be conspicuous in so controlling the immense domains of the Government within the limits of the States as to avoid those checks to population and prosperity so likely to grow out of the improper use of extended landed monopolies. The people of the States in which the public lands are situated should not be led too often to regret their own want of control over their whole territory, and be made to bear evils because they have no power to remove them. The committee believe that the Spanish grants already noticed, and which are somewhat doubtful in extent and location, have been a serious evil to a portion of the State of Louisiana. Insecurity of title checks population, retards improvement, and is greatly adverse to agricultural prosperity. That confidence and security in the title to freehold to which a share of the unexampled prosperity of many of the new States of the confederacy has been with much reason attributed has been denied to that part of the State whose citizens the legislature has asked us to relieve.

The committee are apprised that much of the land covered by the disputed claims has been sold by the United States, and that the purchasers have been or may be sued by the claimants, in courts already established, for the lands on which settlements are made. But the committee hope and have reasons to believe that the claimants will

generally resort to the means of adjudication recommended by the committee, and thereby quiet the settlers in the possession of their homes.

With this view of the subject the committee report a bill.  
(Leg. Jour., p. 125.)

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## TWENTY-EIGHTH CONGRESS, FIRST SESSION.

February, 19 1844.

Mr. Archer made the following report:

The Committee on Foreign Relations, to which has been referred the memorial of Robert Greenhow, asking that Congress should purchase a certain number of copies of a work he has in press, entitled "The History of Oregon, California," etc., have had the same under consideration, and report:

That the memorialist is the translator of foreign languages and librarian to the Department of State; that he alleges that in the spring of 1838 he was charged by the Hon. J. Forsyth, then Secretary of State, to make for his use an abstract of certain reports and other papers relative to the Northwest coasts and territories of this continent, and the claims of the United States thereto; that becoming convinced, after an examination of these papers, that they were insufficient to afford the means of arriving at correct conclusions on the subject, he voluntarily undertook to make a complete investigation of the facts and the questions of political right connected with that portion of America; that for this purpose it was necessary to collect the materials from the annals of other countries, from journals of expeditions by sea and land, from newspapers, and official and private letters and reports in various languages, and to compare them carefully in order to determine the true value of the evidence contained in each, and, when the facts had been thus ascertained, to define and display their bearings on the several political questions which have been agitated with regard to those countries; that in this investigation he was employed more than two years, devoting all the time he could abstract from his official duties to the task; that at the end of that time he delivered to the Secretary of State A Memoir, Historical and Political, on the Northwest Coast of North America, embracing a geographical description and an historical account of those countries, with reviews of all the political claims, discussions, negotiations, and conventions respecting them since their discovery; that his work met the approval of the Secretary and was by him communicated to the Senate, by which body it was ordered to be printed.

The memorialist further states that not being satisfied with this memoir (notwithstanding the approval it had elicited from many distinguished individuals and journals, both at home and in foreign countries), in consequence of its having been published sooner than he desired and before he could have access to some authorities which he wished to consult, he very soon after the publication undertook to revise it, in doing which he had been able to procure so large a mass of new materials as to require that he should recast the whole; that he has done this at a great expense of labor, and has put his new work to press, to be printed in a large type, and accompanied with a map engraved on copper, which has also cost him much labor and expense.

The title of this new work is A History of Oregon, California, and the Other Territories on the Northwest Coast of North America. The committee, as required by their duty, have given an adequate examination to the performance. They find the historical portion detailed and full, embracing accounts of all the discoveries (as far as they are advised) and settlements made or attempted in that portion of our continent, with examinations of the various questions of political right which have been agitated in relation to them. The style is clear and unpretending, as required by the nature of the subject, and the references to the authorities abundant and precise.

The work is accompanied by a geographical description and map of the countries in question, and has appended to it a number of documents, original or abstracted, as proofs and illustrations of the history. An account is included of the negotiations of our Government and that of Great Britain in relation to the portion of the coast and country the title of which is in controversy between them, with a reference to some of the proceedings which have taken place in Congress in relation to the occupation and settlement of the Territory.

The memorialist alleges that for the preparation of his former memoir, which he conceives to have been useful to the Government, he has received no recompense; that he has greatly added to its capacities of usefulness in the new, enlarged, and improved form in which he has now presented it in his history, etc., and he asks that Congress will make him a compensation for his labors, so far as they may have been useful to the Government or may now promise to become so, by authorizing the purchase of such a number of copies of his work as they may deem adequate to that end.

The committee is of opinion that at the present moment, when the discussion of the question of title to the Territory of Oregon is about to be resumed, both in Congress and negotiation, an impression of the work of the memorialist and its diffusion will be calculated to subserve a valuable purpose; and that it is advisable, therefore, that Congress should contribute to that diffusion by authorizing a subscription to the book. With this view, they report a bill.

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February 20, 1845.

On the petition of John Strohecker and others Mr. Archer reported:

The petitioner states that himself and others "met with losses by the Fire and Marine Insurance Company of Charleston, S. C. The inability of payment by the said company was occasioned by their loss of insurance on the schooner *Enterprise*, bound from the District of Columbia to Charleston, S. C., and forced by stress of weather into Bermuda, where the property was forcibly seized and detained by the local authorities of the island in 1835;" \* \* \* and they apply to Congress "for the repayment of the amount which they were compelled by a suit at law to pay the insured, amounting, with interest, to \$35,530."

The ground on which the application rests is a supposed obligation on the part of the Government of the United States to indemnify the loss the petitioners had sustained from the refusal of the British Government to make compensation. This supposition is, however, entirely erroneous. A foreign Government is not bound in the strictness of public law to afford protection in its ports to a description of

property which its policy refuses to recognize in that character, unless in cases in which the object has been secured by treaty stipulations. The British Government does refuse this recognition as respects the description of property alluded to in the petition, and has not bound itself to protection by any treaty arrangement, though the propriety of such an arrangement, in comity and policy, has been pressed on her by our Government.

The Government of the United States has pressed for indemnification for the loss of property in the case of the vessel alluded to in the petition and other cases of similar character, but heretofore with no success. This is all the petitioners have a right to claim of the Government, and the utmost that it is bound to render, the case not belonging to the class which Governments are obliged to prosecute by war. The Government will, it may be presumed, continue to employ endeavors by negotiation to obtain satisfaction for the petitioners. It would have no authority in law or usage for holding itself obliged to stand in the place of the British Government, on the ground of its refusal, and make the satisfaction itself.

The committee submit a resolution that they be discharged from the further consideration of the petition.

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### THIRTY-SECOND CONGRESS, FIRST SESSION.

May 27, 1852.

[Senate Report No. 242.]

Mr. Underwood made the following report:

The Committee on Foreign Relations, to whom the memorial of William Money was referred, report:

That the memorialist claims compensation for 45 horses seized under the orders of General Kearny in California, and for other articles lost, as he avers, in consequence of the conduct of the troops under the command of said Kearny. The horses are valued at \$100 each. The memorialist alleges that he had been engaged for many years as a naturalist, in exploring California, studying the geology, geography, and productions of the country, with a view to publish the information accumulated by his observations and researches; and that he had compiled a large manuscript volume containing many drawings, paintings, and maps, which was worth \$10,000. He says he had instruments connected with his scientific investigations in natural history worth \$320, and personal baggage and provisions worth \$680. He states that in November, 1846, he left the town of Los Angeles for Sonora, and having reached an Indian village called Howargo was there deprived of his horses by the troops under the command of General Kearny, and thus deprived of the means of pursuing his journey or of returning. He moreover states "that information having been given by General Kearny's troops to those Indians and to the neighboring tribes that the country was under the American flag and that it became the duty of those Indians to aid and assist in the American cause, and to prevent the passage of all persons from the settlements to Sonora," it was a sufficient incentive to the Indians for the exercise of their natural inclination for pillage; and after the departure of the troops of General Kearny the Indians took prisoners the whole of the memorialist's party, and commenced an indiscriminate plunder

of the property and baggage of the memorialist, and in a few moments totally destroyed all the valuable manuscripts, drawings, maps, and interesting documents, the result of more than twenty years' arduous labor, and upon which the memorialist placed his sole dependence for his future maintenance.

The memorialist also mentions the sufferings to which his wife was subjected in consequence of his losses. His statements on this subject present a case of female suffering of very aggravated character and well calculated to make a deep impression on the sensibilities of the heart.

The committee, after due deliberation, have determined to report a bill authorizing an inquiry into the truth of the allegations of the petition, and to provide for the payment of as many of the horses of the petitioner as were taken under the orders of General Kearny and appropriated to the service of the United States.

The committee would have reported a bill for the immediate payment to the petitioner of the value of the horses claimed by him, but for certain circumstances which have in a great degree thrown suspicion upon the whole claim, and which the committee deem proper to state. The affidavits which prove the value of the horses and the property state in words written at length the value of the articles. It appears from the inspection of the affidavits that the value for each horse was first written forty or fifty dollars, and that the word "forty" or "fifty" has been erased and 100 in figures inserted in its place preceding the word dollars. It is clear that the word erased was forty or fifty, but which can not be distinctly told. At the time General Kearny invaded California, the committee has ascertained from various sources that the usual price for the best horses in California did not exceed the price of \$25 per head on an average. It seems to the committee that the valuation put upon the horses by the witnesses whose affidavits are filed was very extravagant compared with reliable information obtained from other sources, but when the valuation as originally written in the affidavits has been erased and figures inserted doubling the price such part brings a just suspicion upon the whole claim.

The committee perceive no ground, no proof, upon which the Government of the United States can justly be made responsible for the depredations committed by Indians in the manner stated. There is no evidence that General Kearny or any of his officers or men gave directions to the Indians to make prisoners of the memorialist and his family, or depredate on his property. Nor does the committee perceive that the loss of the manuscripts, etc., was a necessary consequence of the seizure of the horses. Thieves may have stolen the property, even if the horses had not been taken. The damage complained of for the loss of all the property, except the horses, is too contingent and uncertain to institute a valid claim against the Government. Moreover the committee have no means of forming a judgment in regard to the value of the maps, drawings, manuscripts, etc., said to have been destroyed by the Indians. Some samples of the talent of the memorialist which have been exhibited to the committee do not produce any favorable opinion of the value of manuscripts, etc., said to be destroyed.

The committee herewith submit a bill.

## THIRTY-THIRD CONGRESS, FIRST SESSION.

July 19, 1854.

[Senate Report No. 362.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Messrs. Puig, Mir & Co., of New Orleans, asking the remission of duties exacted on certain coffee imported into that port in the Spanish brigs *Pepita* and *Alatayada*, have had the same under consideration, and now report:

That it appears from a certified copy of the records of the circuit court of the United States, fifth circuit, and eastern district of Louisiana, in the case of the United States *v.* Puig, Mir & Co., that the evidence in the case established the following facts, viz: "The brig *Pepita*, a Spanish vessel, arrived at this port (New Orleans) on the 16th January, 1853, from the city of Habana, Cuba, having on board 400 bags of coffee consigned to Messrs. Puig, Mir & Co., merchants of that city. This was the first Spanish vessel which had come consigned to that house with coffee direct from the island of Cuba. They had read in the New York Price Current of Saturday, the 8th January, 1853, the following statement: 'Coffee duty free when imported from place of growth in all vessels except those of the Netherlands, Spain, and Portugal, in which case it is 20 per cent ad valorem; and also free when imported in vessels of those nations from their own colonies.' They had determined, in case the coffee should be liable to duty, to ship it elsewhere, being satisfied that in such a case it could not be sold there, except at a heavy sacrifice. That there might, therefore, be no doubt upon the subject, they applied for information to the naval officer and to the collector of customs, and were told by them that the vessel was subject to the payment of foreign duty only, and that there was no duty on the coffee; and they accordingly granted a free permit for its delivery. The coffee was landed and sold at its then market value, but at a loss on the invoice cost of \$207.13. The account of sales was made out and forwarded to the shippers, the proceeds of the coffee invested in flour, and with this for cargo the *Pepita* had been cleared for Pernambuco, when for the first time, viz, on 22d February, 1853, the officers of the customs discovered their error and applied to Messrs. Puig, Mir & Co. for the payment of duties, which, under the circumstances, they refused to pay; and this suit was instituted against them and a verdict and judgment was rendered in favor of the United States on the 13th February, 1854, for \$1,310.54, with legal interest."

It further appears from the same authority that in another suit between the same parties and before the same court the following facts were proven by the evidence, viz:

The brig *Atalayada*, a Spanish vessel, arrived at the port of New Orleans on the 30th January, 1853, direct from Habana, Cuba, with 1,191 bags of coffee, consigned to Messrs. Puig, Mir & Co., of New Orleans. These gentlemen were informed by the naval officer and collector of the customs that the vessel was subject to a tonnage duty, but that the coffee was free; and a free permit was accordingly given for its discharge. The last of this coffee was sold on the 18th February, 1853. The whole lot brought the sum of \$18,078.98, being \$522.90 less than the amount of the invoice. The consignees had determined, in case the coffee was subject to duty, to have exported it elsewhere, as they were satisfied that it could not then have been sold in that market, except at a much greater sacrifice. Four days after closing the last sale of this lot, viz, on the 22d February, 1853, Messrs. Puig, Mir

& Co. were notified by the collector of customs that the coffee previously imported by them in the brig *Pepita* was subject to duty, and on the 5th March, 1853, they were informed that this lot was also subject to a like duty. They declined paying them, and the present suit was instituted. A verdict and judgment was rendered against them on the 13th February, 1854, for \$3,761.12, with legal interest.

These facts are corroborated by a letter from the Secretary of the Treasury, dated 20th May, 1854, in answer to inquiries addressed to him by a member of the committee. The Secretary, however, declines any interference in the matter upon the ground that "the Department has no power to grant such relief;" but in a subsequent letter, dated July 15, 1854, expresses the opinion that such relief should be granted by Congress.

From the facts above presented, established as they are by high judicial authority, it is evident that the petitioners, after using due precaution to ascertain what the law required in order that they might regulate their conduct accordingly, have been made to incur the obligation imposed by the judgments of the court above mentioned solely through the error of the revenue officers of the United States at the port of New Orleans.

The committee believe the petitioners are properly entitled to the relief asked for under the peculiar circumstances of the case, and report a bill in their favor, with a recommendation that it pass.

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### THIRTY-THIRD CONGRESS, SECOND SESSION.

February 28, 1855.

[Senate Report No. 548.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the joint resolution to authorize the payment to William De Forrest the sum of \$12,000 for a quantity of powder destroyed at Puntas Arenas, report:

The petitioner, a citizen of the United States, alleges that he was owner of a large quantity of gunpowder, which was stored at Puntas Arenas, on the coast of Central America, near to the town of San Juan (called otherwise Greytown), on said coast; that he was engaged in commerce at San Juan at the time, and said powder was brought there by him in course of trade; that in July, 1854, after said town of San Juan had been bombarded and burnt by Commander Hollins, of the Navy of the United States, under orders, as he alleged, from this Government, and on the next day thereafter the agents of the Transit Company of the United States, being American citizens, fearing that after Commander Hollins and the vessel of war he commanded should leave San Juan the inhabitants of that town would wreak their vengeance against American citizens because of the act of Commander Hollins aforesaid in destroying said town, by setting fire to said powder, and thereby destroying the property of said American Transit Company, requested Commander Hollins to cause the said powder to be destroyed, which he did accordingly by sending his men there and throwing it into the bay or river. This fact and the above reason for it are proved by Commander Hollins.

It appears that there was so destroyed about 20,000 pounds of powder in store; that the American Transit Company had large and

valuable buildings and other property at Puntas Arenas, which is the Atlantic terminus and depot of that company on their interoceanic route by the river San Juan and the Lake Nicaragua to the Pacific, and if so large a quantity of powder had been exploded, there is no doubt all of said property must have been thereby destroyed.

The committee mean to express no opinion as to the construction placed on the orders of his Government by Commander Hollins when he destroyed San Juan, because the present occasion does not call for it.

The violence and insults offered to a minister of the United States returning home from Central America via San Juan in the same year by the inhabitants and self-styled authorities of said town were such as to induce said minister to engage a large body of American citizens (also at the time returning home by said transit route from the Pacific) to remain at Puntas Arenas to guard the property of said transit company and protect American citizens there from violence and outrage by the inhabitants of said town. Which act of said minister was afterwards recognized by Congress in paying the expenses of said guard, and the committee consider that the same sense of justice or obligation which influenced Congress to defray the expense of guarding American property at that point from depredation should extend a fortiori to indemnity for property of an American citizen at the same place actually destroyed by an officer sent there with a part of the public force to demand reparation and indemnity in the name of his Government of those from whom the violence on both occasions was apprehended. In thus determining, however, the committee by no means imply any obligation on the Government for indemnity for any losses sustained by any persons at the town of San Juan, where the same was destroyed, as aforesaid—a question not before them.

The committee exhibit as a part of this report a letter from the Secretary of State, to whom the claim was referred for an opinion, and report a joint resolution accordingly:

DEPARTMENT OF STATE,  
*Washington, February 23, 1855.*

SIR: The memorial of Mr. De Forrest (the same which you sent to me) has been submitted to the Department, and I believe the facts in relation to the transaction are in the main true. I would suggest a modification of the resolution in regard to the sum to be paid, and advise that it should provide for the payment of the fair value of the powder belonging to Mr. De Forrest at the time of the destruction thereof, not exceeding the sum of \$12,000.

I think the fact of the value, as well as of the ownership of the powder at the time it was destroyed, should be inquired into.

I have the honor to be, sir, very respectfully, your obedient servant,

W. L. MARCY.

Hon. JAMES M. MASON,  
*Chairman Committee on Foreign Relations, Senate.*

P. S.—The papers which accompanied your letter are herewith returned.

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### THIRTY-FOURTH CONGRESS, FIRST SESSION.

April 23, 1856.

[Senate Report No. 141.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of William Foster, praying compensation for services and

expenses in obtaining the opening of the port of Manzanillo, Mexico, have had the same under consideration, and now report:

It is stated on the petition that sometime in the latter part of the year 1853 the petitioner left his home in San Francisco and proceeded to Cohina, Mexico, for the purpose of engaging in mercantile business. That soon after his arrival there, in January, 1854, he visited the port of Manzanillo, and finding that place, as he conceived, to possess advantages as a depot for the steamers which ply between San Francisco, Panama, and San Juan del Sur, he abandoned his mercantile enterprise, returned to San Francisco, and, after consultation with the different steamship companies, proceeded to the City of Mexico, applied for and ultimately obtained from that Government permission for the Nicaragua and independent lines to touch at the said port of Manzanillo, free from all port charges, for the period of nine years from the 25th of October, 1854, and that in so doing he incurred expenses amounting to \$3,858, besides the loss of sixteen months' time.

It thus appears by his own showing that in this matter the petitioner acted on his own judgment or as the agent of the steamship lines, without any intervention of the authorities of the United States.

If the President, to whom appertains the conduct of our foreign intercourse, had deemed it important to the commercial interest of the United States to obtain for it any privileges not heretofore enjoyed at the port of Manzanillo, he would doubtless have sought to procure them in the regular way, and through the agency of our minister in Mexico.

If, therefore, this claim rests upon any supposed advantages secured to the Government and people of the United States by the self-constituted diplomatic agency of the petitioner he deserves to be rebuked, rather than rewarded, for presuming to take upon himself without authority the performance of the proper functions of the Government. But if, as it appears from the petition, he acted merely as the agent of the steamship lines, then he should look to them for whatever compensation he may be entitled to on account of his services.

The committee therefore recommend that the prayer of the petitioner be rejected.

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### THIRTY-FIFTH CONGRESS, FIRST SESSION.

March 30, 1858.

[Senate Report No. 135.]

Mr. Polk made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of George M. Weston, the commissioner of the State of Maine, have had the subject under consideration, and now report:

That by the fifth article of the treaty of Washington, concluded the 9th day of August, 1842, between the United States of America and Her Britannic Majesty, it was covenanted by the United States to pay and satisfy the State of Maine for all claims for expenses incurred by her in protecting the therein referred to disputed territory on the northeastern boundary of the United States. That in the year 1839, upon the sudden emergency of the Aroostook war, for the purpose of raising the means of protecting said disputed territory the State of Maine issued and sold her 6 per cent stocks to the amount of about \$800,000, at a

discount below their nominal value. Also, that in order to raise additional amounts of cash she exchanged 6 per cent for 5 per cent stocks to the holders of such 5 per cents. Under the act of Congress of the 3d of March, 1851, the United States has paid back to Maine the actual amount of money she realized by such sale and exchange of stocks, and also interest thereon at the rate of 6 per cent per annum. Under said act Maine claimed not only the amount so paid to her by the United States, but also the amount of discount and loss, with interest thereon, which she was compelled to incur by the aforesaid sale. On the 10th of April, 1852, the Treasury decided to pay as is stated above, refusing the claim for losses in the sale and exchange of her stocks. The agent of Maine at once applied to Congress for further relief, and the Senate decided in her favor in August, 1852. But having failed to obtain the relief sought, owing to the fact that action by the House was not had on her claim, she now presses her claim before Congress.

Your committee think that the losses so incurred by Maine, in the sale and exchange of her stock, for the purpose of raising money to defend the disputed territory, as aforesaid, together with interest on the same, is as much a part of the expenses incurred by her, in the sense of the treaty of Washington, as the amount already refunded to her by the United States, and ought, accordingly, to be paid and satisfied to her. They therefore beg leave to report a bill for that purpose.

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#### FORTY-FIRST CONGRESS, FIRST SESSION.

April 1, 1869.

[Senate Report No. 4.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of the European and North American Railway Company, praying aid in the construction of a railroad from Bangor, Me., to the eastern boundary of that State, have had the same under consideration, and ask leave to submit the following report:

The nature of the enterprise in whose behalf the aid of the Government is asked and the considerations of national importance which, in the opinion of your committee, entitle its projectors to the assistance they require, are set forth in the memorial which forms the subject of this report, and is appended to it. The prayer of the petitioners is twofold: As assignees of Maine and Massachusetts they ask that the sums due to these States from the General Government on all claims which accrued prior to 1860 be allowed and paid; and they pray also for such subsidies as Congress has been used to grant in aid of similar enterprises in other parts of the country. It is the purpose of the present report, however, only to examine that portion of the subject which concerns the claim made by Maine and Massachusetts for interest on their advances during the war of 1812. The sums due them on this account are claimed by the petitioners as their right. The subsidies are asked on a different ground.

In the consideration of this subject it will be necessary, first, to state the nature of the claim and give the history of its prosecution, and then to answer the various objections which, in the course of protracted discussions, have been made to its payment.

During the war of 1812-1815 with Great Britain, Massachusetts advanced for the use of the United States \$657,924 74, as allowed after examination at the War Department and as paid by appropriations in 1830 and 1859. By the articles of separation between Massachusetts and Maine, in 1820, the claim for these advances was divided between the two States in the proportion of two-thirds to Massachusetts and one-third to Maine, and both States have recently assigned their unpaid claim for interest to the European and North American Railway Company, the present petitioners.

The justice of the claim has been acknowledged and the principal of the debt paid. The States now claim interest on the ground that it has been the uniform practice of the Government to pay interest to the States upon their advances for war purposes.

This was done in respect to advances for the Revolutionary war by the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances<sup>1</sup> of States during the war of 1812-1815, a more restricted rule was adopted, viz, that States should be allowed interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812-1815, with the exception of Massachusetts. Here are the cases: Virginia (Stat. L., vol. 4, p. 132); Maryland (Stat. L., vol. 4, p. 161); Delaware (Stat. L., vol. 4, p. 175); New York (Stat. L., vol. 4, p. 192); Pennsylvania (Stat. L., vol. 4, p. 241); South Carolina (Stat. L., vol. 4, p. 499).

In Indian and other wars the same rule has been observed, as in the following cases: Alabama (Stat. L., vol. 9, p. 344); Georgia (Stat. L., vol. 9, p. 626); Washington Territory (Stat. L., vol. 11, p. 429); New Hampshire (Stat. L., vol. 10, p. 1).

During the Mexican war (see Stat. L., vol. 9, p. 236) a general provision was made in the following language:

That in expending moneys under this act and the resolution which it amends, it shall be lawful to pay interest, at the rate of 6 per centum per annum, on all sums advanced by States, corporations, or individuals in all cases where the State, corporation, or individual paid or lost interest, or is liable to pay it.

All that is asked now is the application of this well-established rule in favor of Massachusetts.

#### HISTORY OF THE CLAIM.

It is familiarly known that Massachusetts was not in accord with the Administration of the United States during the war of 1812-1815. The political passions of that day, connected with the great events then occurring in Europe and with the commercial interests in this country, which were ruined by the war, were strong and unreasonable. Massachusetts was charged with want of alacrity in the discharge of her national duties, and a portion of her people were even accused of secret sympathy with the enemy. The State, on the other hand, complained that she was neglected by the nation and left a helpless prey to the expeditions of the enemy sallying forth from the

<sup>1</sup> By the term "advances" is not meant money furnished to the Government by the States, but money expended by them for purposes of national defense, the expenses of which it is the duty of the National Government to bear.

military and naval stations of Halifax, and that while a large part of her territory was long occupied by British troops, her whole coast constantly menaced by their ships, and her towns ravaged, burnt, or subjected to military contributions, the national arm was not efficiently extended for her protection. Smarting under these grievances, real or imaginary, and stimulated by the party spirit so violent at that time, her governor, in the early part of the war, set up the pretension that her militia, when called into service, could not be treated as United States troops and be placed under the orders of United States officers without his consent. To that pretension the National Government did not assent, as it never can assent.

As the war proceeded, the governor of Massachusetts is understood to have abandoned his original pretension and to have objected to the incorporation of the militia with the United States troops, chiefly upon the ground of practical inconvenience. When, however, the question of indemnifying Massachusetts for her military expenditures became the subject of discussion, the position was taken that the National Government could not pay the charges of troops not fully under the orders of the President, who is, by the Constitution of the United States, the Commander in Chief of all the national forces. The good sense of Massachusetts has long since acquiesced in this view, but this objection could at most affect a portion only of her claims. Many of her troops had been put into the field on the direct requisition of the President or of United States officers; others, after being called out by the State, had been recognized by, or had acted under, the national authorities, and still others had been hastily summoned to repel actual or threatened invasion. No one questioned in the Congressional discussions which immediately followed the war that Massachusetts had large and just claims. The liability of the National Government was denied only in the cases affected by the pretension of her governor, heretofore alluded to. Nothing else was put in controversy, although Congress, in the years following the war, was under the control of the party to whom the attitude of Massachusetts during that struggle had been in some respects obnoxious. Favorable reports upon the claims of that State for military advances were made to the House by a select committee during the Fifteenth Congress, and by the Committee on Military Affairs during the Eighteenth Congress. These reports were not acted upon. During the Nineteenth Congress the Committee on Military Affairs made another favorable report, accompanied by a bill to provide for the examination and payment of these claims, on which the House acted December 15, 1826, by adopting the following resolution:

*Resolved*, That the Committee of the Whole House be discharged from the further consideration of the bill to authorize the settlement and payment of the claim of the State of Massachusetts for certain services rendered during the late war; that the same, with the claim of Massachusetts for military services, be referred to the Secretary of War, and that he be instructed to report to this House what claim, and what amount of said claim, may be allowed and paid, upon the principles and rules which have been applied to the adjustment of claims of other States, for military services during the late war, and to which the assumed authority of the governor of that State to control the militia and to judge of the necessity of ordering them into service, does not apply; and also, if any parts of said claim are disallowed, to state the reasons for which the same are rejected.

This resolution of the House, vindicating the authority and dignity of the Government, and at the same time doing justice to Massachusetts, is the basis of all the action which has been had in respect to the advances of that State in 1812-1815. Nothing has been allowed

which is affected by "the assumed authority of the governor of that State to control the militia, and to judge of the necessity of ordering them into service."

In obedience to this resolution, the Secretary of War directed an examination by the Third Auditor, and during the second session of the Twentieth Congress (Ex. Doc. No. 3) he reported that the claims of Massachusetts as presented amounted to \$843,349.60, of which he had allowed \$430,748.26.

The payment of this sum was provided for by act of Congress of May 31, 1830 (U. S. Stats., vol 4, p. 428), as follows:

That the proper accounting officers of the Treasury, under the superintendence of the Secretary of War, be, and they are hereby, authorized and directed to audit and settle the claims of the State of Massachusetts against the United States for the services of her militia during the late war, in the following cases: First, where the militia of the said State were called out to repel actual invasion: *Provided*, Their numbers were not in undue proportion to the exigency. Second, where they were called out by the authority of the State, and afterwards recognized by the Federal Government. And, thirdly, where they were called out by, and served under, the requisition of the President of the United States, or of any officer thereof.

SEC. 2. *And be it further enacted*, That the sum of \$430,748.26, if so much be necessary, be applied to the foregoing purposes out of any money in the Treasury not otherwise appropriated.

It is noticeable that while this act of Congress of May 31, 1830, appropriates the exact sum reported as due by the War Department, under the House resolution of December 15, 1826, it does not, in terms, refer either to that resolution or to the report. What this act of Congress does is, by a most careful and cautious enumeration of the cases in which payment may be made, to render effectual beyond any possibility of mistake the decision of the House contained in the resolution of December 15, 1826, that no payment should be made in cases affected by an unwarranted pretension of the governor of Massachusetts.

Upon examination at the War Department, all the items making up the \$430,748.26 were found to be within the rules of the act of May 31, 1830, and thereupon that sum was paid.

Subsequently, the House of Representatives, on the 24th of February, 1832, adopted the following resolution:

*Resolved*, That the Secretary of War is hereby instructed to examine the claim of the State of Massachusetts for disbursements for military purposes during the late war, according to the rules or cases set forth in an act of Congress providing for the settlement of said claim, approved the 31st day of May, 1830; and if any further sum shall be found due to the claimant by such examination, to report the same to the House.

And on the 14th of May, 1836, Congress adopted the following joint resolution (U. S. Statutes at Large, vol. 5, p. 132):

A RESOLUTION to authorize the Secretary of War to receive additional evidence in support of the claims of Massachusetts and other States of the United States for disbursements, services, etc., during the late war.

*Resolved*, That the Secretary of War, in preparing his report pursuant to a resolve of the House of Representatives, agreed to on the 24th of February, 1832, be, and he hereby is, authorized, without regard to existing rules and requirements, to receive such evidence as is on file, and any further proofs which may be offered tending to establish the validity of the claims of Massachusetts upon the United States, or any part thereof, for services, disbursements, and expenditures during the late war with Great Britain; and in all cases where such evidence shall, in his judgment, prove the truth of the items of claim, or any part thereof, to act on the same in like manner as if the proof consisted of such vouchers and evidence as is required by existing rules and regulations touching the allowance of such

claims; and that in the settlement of claims of other States upon the United States for services, disbursements, and expenditures during the late war with Great Britain, the same kind of evidence, vouchers, and proof shall be received as is herein provided for in relation to the claim of Massachusetts, the validity of which shall be, in like manner, determined and acted upon by the Secretary of War.

Neither the House resolution of February 24, 1832, nor the joint resolution of May 14, 1836, repeals or modifies the rules of limitation established by the act of May 31, 1830. On the contrary, the first expressly requires that those rules shall continue to be observed; and the second merely changes the rules of evidence so as to admit any satisfactory proofs instead of requiring vouchers technically conformable to the usages of the War Department; and it makes this liberal enlargement applicable to all the States alike. The Secretary, although authorized to accept as proof anything satisfactory to his judgment, was still bound to allow the claims of Massachusetts only in the following cases:

First. Where the militia of the said State were called out to repel actual invasion: *Provided*, Their numbers were not in undue proportion to the exigency. Second. Where they were called out by the authority of the State and afterwards recognized by the Federal Government; and, thirdly, where they were called out by, and served under, the requisition of the President of the United States, or of any officer thereof.

Acting under this resolution of May 14, 1836, and under the rules of limitation prescribed in the act of May 31, 1830, the Secretary of War (Mr. Poinsett, of South Carolina) reported, in 1837 (Ex. Doc. No. 45, second session, Twenty-fifth Congress), that there was due to Massachusetts the further sum of \$227,176.48.

In the years immediately following Mr. Poinsett's examination the Senate voted the sum reported by him on general appropriation bills, and by separate bills, but the House either nonconcurred by small majorities or failed to act. Finally, on the 3d of March, 1859, Congress made the required appropriation; and so, with the appropriation made in 1830, Massachusetts obtained in all, after a delay of nearly half a century, \$657,924.74 upon her claim of \$843,349.60. She obtained it after every item objectionable in point of principle had been eliminated by the resolution of December 15, 1826, and by the act of May, 31, 1830. She obtained it after every item objectionable in point of fact had been exposed to the unsparing criticism of her political opponents. She obtained it after every item objectionable in point of proof had been subjected to the protracted and rigorous examination of officials from a section of the country where ill will to her was, until recently, fixed and hereditary. She obtained nothing except what was extorted from overbearing and adverse political majorities; and the final appropriation was voted in a Senate where she had few friends, without dissent, and with a general expression of surprise and shame that the rights of a State had been so long denied.

From this sketch it appears that the Government has acknowledged the validity of the Massachusetts claim, and has paid the principal of its debt. The only question which can remain is, whether there is any consideration which ought to relieve us from paying interest upon this debt, as we have done in the case of every other State which made advances during the same war.

This payment is sometimes resisted on the ground that the services of Massachusetts during that war were not such as to entitle her to any consideration from the General Government. In the opinion of

your committee this is no longer an open question. The proper tribunal, the Congress of the United States, has finally decided it.

The original justice and validity of the claim which Massachusetts makes after it had been settled by such adjudication, can never again be the subject of legitimate controversy. Some reply, however, may be proper to recent suggestions which are likely to create an injurious prejudice in the minds of those not familiar with the history of the last war with England.

#### PATRIOTIC CHARACTER OF THE ADVANCES OF MASSACHUSETTS IN 1812-1815.

The coasts of Massachusetts and Maine, as was to be expected from their proximity to the British naval and military station at Halifax, were vexed by the enemy's cruisers during the whole contest, and they received protection from only a handful of United States troops, as our principal efforts were made elsewhere, especially upon our northern frontier. But the storm of war did not burst upon them in its full fury until 1814, after the downfall of Napoleon, when early in September a great naval expedition took possession of Castine, and after sweeping the Penobscot Bay and River, and capturing Belfast, Hampden, and Bangor, sailed westward, hanging like a cloud over the flourishing towns of Wiscasset, Bath, and Portland, and menacing Boston and Charlestown. Gen. Henry Dearborn, the United States major general in charge of the military district which embraced Massachusetts and Maine, and Commodore William Bainbridge, who commanded our naval station at Charlestown, called upon the authorities of Massachusetts at once for aid. Addressing himself to the adjutant general of Massachusetts on the 5th of September, General Dearborn said:

The movements and force of the enemy on our eastern coast appearing to require a considerable additional defense or force, I have deemed it my duty to request his excellency the governor of this State, as well as the governor of New Hampshire, to order out from the two States 5,200 infantry and 550 artillery; from this State the infantry amount to upwards of 4,200 and 450 artillery, exclusive of officers, noncommissioned officers and musicians.

And again on the next day he said:

Will you permit me to suggest to you the propriety of your proposing to his excellency, the expediency of having orders issued for placing the whole of the militia within 20 or 30 miles of the seashore on the alert, and in perfect readiness for marching on the shortest notice.

Addressing the same authority, on the 5th of September, Commodore Bainbridge said:

As I feel extremely anxious in these perilous times, when our country is menaced, both north and south, by a powerful enemy, to know what security can be calculated upon in this part of our country, I am induced to ask the favor of you to communicate to me, as far as is consistent with your official duty and the propriety of my request, the measures that are adopted by the commander in chief of this Commonwealth for the defense of this post and the vicinity. \* \* \* I respectfully suggest the immediate embodying and drilling a respectable force of the militia, to be stationed in different quarters in the vicinity of Boston: to place videttes to prevent the possibility of surprise; batteries on Dorchester heights and Noddles Island, and breastworks thrown up on North Battery wharf. These precautions would in all probability prevent an attack, and if it did not, would enable us to make an honorable resistance. Allow me, my dear general, to say, that if the militia is not embodied in the field I should much fear the work of destruction would be over before they could rendezvous or oppose; for four or six hours would be all the time the enemy would require.

The works of defense recommended by Commodore Bainbridge were promptly erected, and the militia called for by General Dearborn were at once ordered into the field, as every previous request from the same officers had been complied with. In April, 1814, Commodore Bainbridge called the militia, and met with such a response that upon his report of the facts the Secretary of the Navy, in a letter dated April 27, took pleasure in saying that "these proofs of zeal and alacrity to repel meditated attacks of the enemy are extremely gratifying."

On the 13th of June the commodore called again for militia to reinforce the navy-yard, and to guard the approaches by Chelsea bridge, and the call was answered with gratifying promptness. In July, 1814, General Dearborn called for 1,100 militia, which were furnished at once and placed under the command of United States officers.

In reference to the militia called out at General Dearborn's request, of September 5, the governor of Massachusetts, in a letter written on the 7th to the Secretary of War, said:

A few weeks since, agreeably to the request of General Dearborn, I detached 1,100 militia for three months for the defense of our seacoast, and placed them under his command as superintendent of this military district: but such objections and inconveniences have arisen from that measure that it can not now be repeated. The militia called out on this occasion will be placed under the immediate command of a major-general of the militia.

This language was the subject of much discussion during the following years in Congress. One side contended that it showed a persistence in the claim, made in the summer of 1812, that the governor had a constitutional right to withhold the militia from the command of United States officers. The other, that he had waived that claim by placing militia under General Dearborn's command in July, 1814; that his refusal to do so in September was not founded upon legal or constitutional pretensions of any kind, but upon practical "objections and inconveniences;" that these had really existed, and that some were very serious, such as the repugnance of the militiamen to serve except under their own officers; and that, although he did not nominally put the militia under the control of United States officers, he brought about a concert of action with them by various practical measures, as, for example, by appointing General Dearborn's son to command the militia at Boston as brigadier-general. The last views finally prevailed, in connection with a formal renunciation, at a subsequent period by both the governor and legislature of Massachusetts, of the constitutional pretension made in 1812. Mr. Monroe, who, as Secretary of War, in a correspondence with the governor had controverted that pretension, as President of the United States sent a special message to Congress on the 23d of February, 1824, in which he said:

It affords me great pleasure to state that the present executive of Massachusetts has disclaimed the principle which was maintained by the former executive, and that in this disclaimer both branches of the legislature have concurred. By this renunciation the State is placed on the same ground, in this respect, with the other States. \* \* \* There never was a moment when the confidence of the Government in the great body of our fellow-citizens of that State was impaired, nor is a doubt entertained that they were, at all times, willing and ready to support their rights, and repel an invasion by the enemy. \* \* \* Essential service was rendered in the late war by the militia of Massachusetts, and with the most patriotic motives. It seems just, therefore, that they should be compensated for such services in like manner with the militia of other States. The constitutional difficulty did not originate with them and has never been removed. It compels with our system to look to the service rendered and to the intention with which it was rendered, and to award the compensation accordingly, especially as

it may now be done without a sacrifice of principle. \* \* \* I therefore consider it my duty to recommend it to Congress to make provision for the settlement of the claim of Massachusetts for services rendered in the late war by the militia of the State, in conformity with the rules which have governed in the settlement of the claims for services rendered by the militia of the other States.

Of the \$430,748.26 allowed to Massachusetts on the first examination of her claim, \$227,662.03 was allowed for the militia called out by the governor in response to General Dearborn's letter of September 5, 1814. Of the remainder, \$196,730.11 was allowed for militia called into service, not by the governor, but by officers of the militia acting under his authority.

On the 3d of July, 1812, the governor directed the militia to act "without waiting for orders, in case of actual invasion, or of such imminent danger thereof as will not admit of delay." And on the 16th of June, 1814, the adjutant-general of the State addressed the following order to several major-generals of militia on the seaboard:

The constant alarm excited and kept up by the predatory course of warfare lately adopted on our seaboard, renders it necessary that guards should be kept up at some of the places, those, particularly, exposed by having large quantities of shipping lying therein. To facilitate the execution of such a purpose, and to render the necessary aid as prompt and efficacious as possible, his excellency the commander in chief directs me to signify it to you as his pleasure that you furnish to every town whose situation, from the present pressure of the war, is exposed to surprise and immediate danger, such military force, and more especially such guards by night, as its peculiar situation and circumstances require.

In apparent ignorance of this order, or perhaps forgetting it, General Dearborn, in a letter to the adjutant-general, dated August 12 of that year, said:

The citizens of the towns of Duxbury and Cohasset are very desirous of having some small force stationed for the defense of their respective villages and vessels, and it is probable that similar applications will be made from other places on the seacoast. If practicable, it would be very desirable to have such small detachments turned out from the immediate vicinity of the several places respectively, without the formality of troubling his excellency the governor on every such occasion. \* \* \* The movements of the enemy and his measures from time to time must, in a considerable degree, determine what shall be proper or necessary to be done on our part; hence the convenience of having small detachments from the militia made in the most prompt and convenient manner.

We have seen that these suggestions had already been anticipated by the authorities of Massachusetts.

Thus far such official papers only have been referred to as serve to show what demands the National Government made on Massachusetts, and how they were met. It remains to give some historical details, which may present more clearly than a general statement the nature of the emergency and the character of the service rendered by the State.

In January, 1814, the British brig *Nimrod* anchored off the wharf in Barnstable, demanded the fieldpieces and other property there, and threatened, in case of refusal, to fire upon the town. In March Falmouth was bombarded. June 11, barges from two British ships of war entered Scituate Harbor, burned several vessels, and carried off others. On the 17th of the same month a British ship of war, two brigs, and several small craft, came to anchor near Scituate Harbor, and on the 9th of July a contribution of provisions, demanded of Scituate by the British ship *Nymph*, was resisted by the militia. In June, again, barges from the enemy's ships appeared at the entrance of Cohasset Harbor, and burned a coasting sloop. There being a large amount of shipping at the wharves, the militia were called out

to prevent further losses, and on the 13th of the same month the enemy came into Wareham, set fire to a factory, and burned several vessels. From Rochester, on the 19th, Captain Loring reports that "the British ships are almost all the time in the Vineyard Sound. The *Nimrod* has appeared in our harbor, destroyed Wareham, and threatens destruction to this place." In the same month the inhabitants of Lynn called for a guard to assist in their protection against "attacks from the enemy's boats." Again, on the 13th, the inhabitants of Gloucester represent that "the enemy have already begun, even within our harbors and creeks, to burn, sink, and destroy the few coasting vessels which remain to us; and the barges from the enemy's ships in our bay, on this morning, entered one of our harbors, landed on our wharves, burned several vessels, and carried off others, before the inhabitants could assemble to repel them." On the 21st nine of the enemy's barges, with 400 men, appeared in the harbor of New Bedford. The property exposed, besides the town, was 50 ships and brigs, "with a great number of small vessels." The whole United States force consisted of 43 men and boys. The militia were called out. The enemy continued off the harbor for a month, making an attack in July at Westport Harbor, which was repulsed.

The greater part of these attacks, actual or threatened, were made within the fifth militia district of Massachusetts. In a letter to the Secretary of War, December 22, 1822, President Monroe said:

I have examined with great attention the report of the Third Auditor of Public Accounts on the claims of the fifth division of the Massachusetts militia, for services in the late war, with the communications of the commissioners of the State on that subject, and, according to the views presented, am of the opinion that the services to which they refer were called for by the exigencies of the times, and were intended to repel, in many instances, actual invasion, and in others the troops were called on well-founded apprehensions of it.

The fifth division embraced Plymouth, New Bedford, Rochester, Scituate, Orleans, Falmouth, and Barnstable.

On the coast of Maine, in April, 1814, the British sloop of war *Rattler* entered Townsend Harbor, in Booth Bay, but her barges were repulsed in an attempt to land. In June and July of that year the British ship *Tenedos* was in the same harbor one week. Her barges were out every day attempting to land, but were beaten off in every instance. In June the enemy burned some small vessels in St. Georges River. On the 29th of that month the enemy, 300 strong, made an attack on Pemaquid Old Fort, which was defended by militia, but were repulsed with loss. In July the enemy landed at Harpswell and took stock from the inhabitants. June 16, the British 90-gun ship *Bulwark* anchored off Saco and Biddeford, and sent in five boats with 160 men, with orders to burn and destroy. They cut down a ship's frame on the stocks, burned three vessels, carried off another, and plundered the store of Thomas Cutts. Of the attempt to get possession of Kennebec River, Gen. William King, afterwards the first governor of Maine, reported from Bath, June 21, 1814, as follows:

A 74 has anchored near Seguin: they have made several attempts to land at the mouth of this river, and on the Sheepscot, but have been beat off in every instance, with the exception of a landing they effected at Fowles Point, where they spiked a 6-pounder. I have ordered four companies into the fort at Georgetown: other companies are ordered out at various points on the back river, which, together with those in this town, will amount to little short of 600.

General King estimated the shipping which had taken refuge up the rivers he was guarding at 40,000 tons, valued at \$1,000,000, which was no small sum at that period.

Eastport, on the immediate border, had been guarded by militia detachments, but was captured in July.

All those events took place in 1814, but before the great naval and military demonstration, which commenced with the capture of Castine by the British early in September, and was followed by General Dearborn's call for militia of September 5. Large bodies of them were at once thrown into Wiscasset, Bath, and Portland, from the last of which a military report, September 19, 1814, says:

Our ships and vessels are all hauled up above the bridge and are prepared to be sunk, and all valuable property is removed from the town and the houses stripped of their furniture: if the enemy should succeed in capturing the forts, they might enter the town, burn, sink, and destroy the property, but would get no prizes.

On the east the militia compelled the enemy precipitately to abandon Belfast; repulsed foraging parties at Northport, and other points on the west side of Penobscot Bay; prevented the enemy from using the resources of that region, and weakened him by covering and favoring desertions from his ranks.

The visitations upon the coast of Massachusetts continued. The selectmen of Plymouth, September 13, 1814, reported:

There is a large British force in our bays, daily in sight of the town, taking and destroying even our little fishing vessels, and they have landed at Brewster, and other places in the bay; put some under heavy contributions and threatened others. River boats and barges have landed several times, one of which was sunk by the small fort at the entrance of our harbor. The inhabitants, of all ages and situations, are moving into the country with their families and effects.

September, 1814, the enemy landed at Eastham and levied a contribution of \$1,200 upon the salt works there. In the same month the salt works at Brewster were subjected to a similar contribution of \$4,000; September 8, the militia officer in command at Gloucester reports that the enemy had made an attack that day at Sandy Bay, but that the affair finally terminated with a loss to the British of 13 prisoners, and later in the same month he reports that two barges, which attempted to land under the fire of the man-of-war *Sir George Collier*, were repulsed after a sharp contest. December 19, 1814, the enemy made an attack on Orleans in barges, in which they burned two vessels and carried off two, but lost two barges, 1 man killed, 2 wounded, and 11 taken prisoners.

These details justify the statements of President Monroe, that the people of Massachusetts were "at all times ready to support their rights and repel an invasion by the enemy," and that "essential service was rendered in the late war by the militia of Massachusetts, and with the most patriotic motives." Considering the exposure of her coasts it is surprising that the expenditures of Massachusetts for militia were so small, being \$320,209.46 in what is now Maine, and \$523,083.60 in Massachusetts, of which the War Department has allowed only \$657,924.74. In contrast with the expenditures of the recent war for the suppression of the rebellion these sums appear insignificant indeed.

#### OTHER OBJECTIONS TO PAYMENT OF INTEREST.

Two other objections are made to the payment of this interest; one, that such a course would establish a bad precedent; the other, that Massachusetts has lost her right to it by her delay in making the claim. These arguments will now be considered briefly.

In answer to the first, it might be urged that if the claim is just, the precedent of paying it is one which our Government should wish to

establish. Honesty and justice are not precedents of which either governments or individuals should be afraid. It is not, however, necessary to press this argument, for the precedent has been established. Every other State which made advances during the war of 1812 has been allowed interest. The list of statutes by which these payments have been made has been given in this report. Massachusetts asks no new rule in her favor. She only seeks the application of that already fixed. She has a right to demand that Congress shall not make her a solitary exception, and deny to her, alone, what has been granted to all her sisters. As no other State remains unpaid, there is no other case to which the precedent can be applicable.

It can not be used to justify the reopening of claims already settled, as is sometimes urged. The case of Virginia may serve to illustrate this. Her claim was adjusted by the rule then in use, and the settlement was intended and accepted as final. The language of the statute is, "the proper accounting officers of the Treasury Department \* \* are hereby authorized and directed to adjust and settle the claim of the State of Virginia." This leaves no room for doubt, and the fact that a different rule of adjustment was afterwards applied to Maryland, and is now asked for Massachusetts, will not justify any new claim from Virginia. What is true of Virginia is true of all the other States whose claims have been paid and settled, principal and interest.

It can not affect the questions which may grow out of the recent rebellion. One instance more will not materially increase the weight of the precedent already fixed. This Government is not bound to apply the rule to a new class of cases. One rule was adopted for the Revolution, another for the war of 1812. Still a third may be necessary when the claims of the States for advances during the late war come to be adjusted. It is, however, clearly the duty of the Government to treat all the States alike, whatever rule they see fit to adopt, and more than this Massachusetts does not ask.

The second objection, founded upon the alleged neglect of Massachusetts in pressing her claim, will scarcely bear the test of examination.

It is said that she might have asked for interest under the act of May 14, 1836. This is a plain misapprehension. That act only related to the mode of proving claims which came within the rules and cases set out in the act of May 31, 1830, and in that act no provision for interest can be found.

It is said that her claims were finally settled by the appropriation made in 1859; that she did not then ask for interest, and that she is now foreclosed from doing so. Your committee see no evidence that there was any final settlement in 1859, and no evidence that she did not then endeavor to obtain interest. On the contrary, the journals of the Senate and House during that session of Congress show that the delegations from Massachusetts and Maine urged the passage of a measure which would have secured the payment of interest. On the same day, the 26th of February, 1859, when the amendment to the Army bill, which ordered the last payment to Massachusetts, was adopted, the Committee on Claims reported the following amendment, which was also adopted, but which was subsequently lost in the House:

That all the States which have had or shall have refunded to them by the United States moneys expended by such States for military purposes during or since the war of 1812 with Great Britain, which have not already been allowed interest upon the moneys so expended, shall now be allowed interest so far as they have them-

selves paid or lost it; said interest to be computed by the proper accounting officers of the Treasury according to the provisions and principles directed to be applied to the case of Maryland, etc.

It was entirely within the discretion of the Senators and Representatives from Massachusetts and Maine to decide whether they would ask for interest under a general or under a special law, and thus it appears that the same Senate which directed the payment of the sum reported by Mr. Poinsett did, on the same day and by an amendment to the same bill, establish a rule by which interest would have been paid on that sum and also on the sum allowed to Massachusetts under the act of May 31, 1830.

So far from there having been any settlement between Massachusetts and the United States in 1859 which cuts off this claim for interest, there was no settlement of any kind whatever, not even of the claim for the principal of the State advances. Nothing is found but an appropriation to pay a particular sum, contained in a report from the War Department, of a particular date. It is the third section of the Army appropriation bill, approved March 3, 1859, and reads as follows (see United States Statutes at Large, vol. 11, p. 434):

SEC. 3. *And be it further enacted*, That for the purpose of executing a resolution approved May fourteenth, eighteen hundred and thirty-six, entitled "A resolution to authorize the Secretary of War to receive additional evidence in support of the claims of Massachusetts and other States of the United States for disbursement services, and so forth, during the late war," the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Massachusetts, out of any moneys in the Treasury not otherwise appropriated, the sum of two hundred and twenty-seven thousand one hundred and seventy-six dollars and forty-eight cents, reported under said resolution to be due to said State by J. R. Poinsett, late Secretary of War, in a report dated the twenty-third of December, eighteen hundred and thirty-seven, made to the House of Representatives the twenty-seventh of December, eighteen hundred and thirty-seven: *Provided*, That in lieu of payment in money the Secretary of the Treasury may, at his discretion, issue to said State United States stock bearing an interest of five per centum per annum, and redeemable at the end of ten years, or sooner, at the pleasure of the President.

There is nothing in this language which indicates that this payment was intended as a full and final settlement of the Massachusetts claim, or that Massachusetts was bound to accept it as such. There is nothing which would render inadmissible a demand for a further examination and a further allowance. This act no more prevents such a demand than the act of May 31, 1830, prevented the subsequent examination in 1836 or the consequent payment in 1859. So far as the language goes the claim for principal might be still unsettled. It certainly does not cut off the demand for interest.

The doctrine which prevails in some courts between individuals, that the acceptance of the principal under certain circumstances bars any subsequent demand for interest, can have no bearing upon transactions in which this Government is concerned. Settlements between individuals are made on terms of equality, remedy in the courts being open to both parties. But this Government does not permit itself to be sued, and those who have claims upon it have no other alternative than to accept whatever it may determine to pay. This Government may itself be bound by the acts of its own officials and by its own appropriations, but nobody else is concluded thereby. Certainly this is not the case unless there is a requirement that a particular sum offered shall be accepted in full payment of a claim, if accepted at all.

Nor is there anything unusual in this claim of Massachusetts for interest after the payment of her principal. She is but following the example of all her sister States, to each of whom interest was allowed

by a special act after the principal had been paid. For example, in the case of Pennsylvania the principal was paid by the act of March 3, 1817. The language here is: "For pay of the Army and militia, including the sum of \$300,000, exclusive of interest, advanced by the State of Pennsylvania, for defraying the expenses of the militia of said State during the late war, \$730,000." (Stat. L., Vol. III, p. 378.) The interest was paid by an act bearing date just ten years after, March 3, 1827 (Stat. L., Vol. IV, p. 240), entitled "An act authorizing the payment of interest to the State of Pennsylvania."

A similar statute, paying interest to New York, bears date May 22, 1826 (Stat. L., Vol. IV, p. 192); and other instances might be given to show how exactly Massachusetts is following the precedents established by States whose Representatives now resist her claim.

Massachusetts was here until 1859 asking that the principal of her claim be paid, and in particular that a sum reported as due by the Secretary of War in 1837 be provided for by an appropriation. Until that was done the time had not come to state an interest account. And when this was done there was not only no abandonment of interest, but those who then represented Massachusetts and Maine were at the very same time openly pressing a general measure which would have given them interest, and which, having been adopted by the Senate, only failed in the House by a small majority in the last hours of the Thirty-fifth Congress.

At the very next session of that body, namely, on the 8th of June, 1860, the Senators from Massachusetts and Maine were found pressing the same general measure, but this time with the following proviso, which bears upon the peculiarity in their case, that their advances had been made prior to the separation of the two States:

*And provided*, That in computing the interest upon the moneys advanced by Massachusetts in the war of 1812 with Great Britain such moneys shall be considered after the separation of Maine from Massachusetts as having been advanced in the proportion of one-third by Maine and two thirds by Massachusetts, and the interest accounts of said States shall be adjusted accordingly.

It is a clear mistake, therefore, to say that Massachusetts and Maine either waived their claims for interest in 1859 or are chargeable with unreasonable delay in demanding it afterwards, or that the demand was never made until it was made in the interest of a railroad company. Interest was provided for in a measure which was barely defeated in 1859, and which was again vigorously pushed in 1860. The interest was not dedicated to the construction of a railroad until 1864. It was only during the Thirty-seventh Congress that Massachusetts and Maine intermitted their efforts in this behalf, and then obviously out of patriotic consideration for the disturbed condition of public affairs.

Your committee, then, after careful consideration of the whole case, are of opinion that that interest should be paid to Massachusetts and Maine, as it has been paid to all the States which made advances during the same war of 1812. The mode of computing interest presents some doubtful questions. In the adjustments with other States the rule has been that interest should only be paid to them when they have themselves paid it or lost it. This rule, first applied in the case of Virginia, received a construction in an opinion of Attorney-General Wirt, which has governed all subsequent cases.

States are deemed to have lost interest when they have raised money for their advances by the sale of interest-bearing funds; and they are deemed to be paying interest when, having claims upon this Govern-

ment, they are at the same time paying interest upon debts of their own. If the interest account of Massachusetts and Maine is subjected to this rule, it will amount now to \$767,947, according to a computation submitted to your committee, which seems to be correct. There are some considerations which seem to make it proper that the rule in this case should be construed liberally. The delay of twenty-two years after Mr. Poinsett's report in favor of the payment before the appropriation was made by Congress, and the fact that the whole sum is now dedicated to a work of national importance, upon which Congress may well be asked to look with favor, should dispose us to act generously. This is not a case for any narrow rule or niggard application of it. The case appeals to our sense of justice and to sentiments of patriotism. In paying an honest debt the nation will contribute to an important work by which the general welfare will be promoted.

The committee report the accompanying bill, and recommend its passage.

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#### APPENDIX.

##### MEMORIAL OF THE EUROPEAN AND NORTH AMERICAN RAILWAY COMPANY.

*To the Senate and House of Representatives of the United States in Congress assembled:*

The European and North American Railway Company respectfully represent that they are engaged in the work of constructing a railroad from Bangor, in the State of Maine, of the probable length of 112 miles, to the eastern boundary of said State, where it will connect with a line of railroad now nearly completed to St. John, in New Brunswick, which is connected with Halifax, Nova Scotia, by a line of railway for the larger part actually built, and the unfinished part is under contract and to be completed during the year 1870. Your memorialists further represent that their enterprise, as authorized by charter, includes a branch of about 100 miles in length, running north from their main line to the St. John River at Grand Falls, or at the mouth of the Fish River, or at some eligible intermediate point. The importance of these works to the defense of our northern frontier, and to our commercial relations with the British provinces, and in their bearing upon the future destiny of North America, as that may be effected by the union of all the English-speaking people who inhabit it, were so elaborately set forth in a report made to the House during the Thirty-eighth Congress (see reports of that session, No. 19), that your memorialists will only briefly refer to them.

The dominant fact in this whole case is the geographical fact that Maine, as bounded by the treaty with Great Britain of 1789, extends so far to the north as to sever the connection between Canada and the British maritime provinces except by the St. Lawrence, the navigation of which is closed by five months of winter ice. It was this fact which induced George III to insist so long that the Piscataqua, and not the St. Croix, should be the dividing line between the provinces he retained and the colonies which had established their right to exist as independent States. It was this fact which induced the British minister at Washington, Sir C. R. Vaughan, in his dispatch of July 4, 1833, to Lord Palmerston, to say that "Great Britain must contend forever for an uninterrupted communication by the usual and accustomed road between Halifax and Quebec," meaning the road through the upper valley of the St. John, which valley they were then occupying without right, under the same necessity which compelled them to hold Penobscot Bay and the eastern half of Maine during the war of 1812-1815.

The Ashburton treaty of 1842 curtailed the proportions of Maine, and fixed as its northern line, instead of the highlands separating the waters of the St. Lawrence and Atlantic, the upper St. John and the St. Francis. But even after this curtailment Maine still projects nearly one degree north of the latitude of Quebec, and Great Britain has acquired only one bank of the upper St. John, and not the whole valley. In the judgment of those who govern that country it is not safe for them to build a military railroad by the way of the upper St. John, and they have given the imperial guaranty of three millions sterling to a line of railroad

from Halifax, following the north shore of New Brunswick, and by the head of the Bay of Chaleur, to the mouth of the De Loup River, to which latter point a railroad now extends from Quebec. To meet these efforts of Great Britain to secure her political and military power in America, commencing with the setting up of a pretended title to a part of Maine and ending in an expenditure of \$15,000,000 to avert the consequences of the partial failure to maintain that title, the necessity devolves upon the United States of opening routes by which their strength may be brought to bear against the communication between Halifax and Quebec. The United States saw it and met it forty years ago by constructing a military wagon road from Lincoln, on the Penobscot River, to Houlton, on the eastern frontier of Maine. It is now to be met by railroad, and not merely to the eastern frontier of Maine, but to its extreme northern frontier, so as to enable us to reach and strike the line of interprovincial connection as about to be established by the head of the Bay of Chaleur. These commanding military considerations, added to the commercial value of the works undertaken by your memorialists, which connect the United States with the population of the maritime provinces, numbering now more than 1,000,000, and rapidly increasing, and which will shorten the ocean passage between New York and Liverpool one-quarter, and, added to their political bearings as tending to hasten the annexation of all the British provinces to the United States, give to them a national importance, and, as your memorialists confidently believe, will secure to them efficient national aid.

The States of Massachusetts and Maine have set apart, to be applied to these works, whatever money may be realized upon their claims against the United States arising prior to 1860, including all those claims which belong exclusively to Maine under the Ashburton treaty of 1842.

Your memorialists desire and pray that their claims may be examined and the amount due thereon allowed and paid; and that the United States will also, from their own means, give to the works of your memorialists such aids and subsidies as they have been accustomed to give to similar works of a national character in other parts of the country.

THE EUROPEAN AND NORTH AMERICAN RAILWAY COMPANY.

By GEORGE R. JEWELL, *President*.

MARCH 8, 1869.

#### FORTY-FIRST CONGRESS, SECOND SESSION.

July 6, 1870.

[Senate Report No. 240.]

Mr. Patterson made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of R. B. and J. M. Forbes and others, owners of the steamship *Meteor*, asking indemnity for her improper seizure and detention by the Government, respectfully report the accompanying joint resolution and recommend its passage:

The facts relative to the *Meteor* appear to be substantially as follows: She was a steamer of unusual speed, built during the rebellion from subscriptions among private citizens, with the purpose of being transferred to the United States, for the capture of the *Alabama* and other Confederate privateers, who were inflicting much damage on the commerce of the United States. The gentlemen contributing were William H. Aspinwall, A. A. Low, L. W. Jerome, P. S. Forbes, of New York; E. B. Ward, of Detroit; Richard S. Rogers, of Salem; M. H. Simpson and James Lawrence, the executors of G. Howland Shaw; John Bailey, James Davis, W. B. Bacon, John G. Cushing, F. W. Tuckerman, and R. B. Forbes and J. M. Forbes, of Boston, the last two being the owners of record. She was also suitable, though in a less degree, for a transport, or for ordinary commercial purposes. Not being needed by the United States for the purposes of her original construction, owing to the sudden collapse of the rebellion, she was

employed for some time as a packet, and in transporting troops between New Orleans and New York. She had been for sale after the suppression of the rebellion.

Previous to the declaration of war by Spain against Chile, made September 25, 1865, and before such declaration was known in New York, the Chilean minister visited the *Meteor*, at the instance of Mr. Jerome (who had an equitable interest in her). The Chilean consul, Rogers, and the Chilean agent, Mackenna, during the period between November 19, 1865, and the date of the seizure, January 23, 1866, were very desirous of purchasing her. Through different parties negotiations were twice opened with the owners, or their agent, Mr. Carey, for her purchase, which, however, proved abortive, and were never in any respect consummated. In the second attempt to purchase the ship certain parties named McNichols, Conkling, Byron, and Nichols acted, or represented themselves as acting on behalf of Rogers, the Chilean consul.

In consequence of these negotiations information was lodged against the *Meteor* for intended violation of the neutrality acts, either at the instance of the Spanish minister or of informers who hoped to obtain a share of penalties to be imposed, or to obtain hush money from the owners.

There was no armament on board the *Meteor* at the time of her seizure. She had originally been provided with two Parrot guns, but they had been taken out some time before the seizure.

She was seized January 23, 1866, and held in the possession of the marshal until July 20, 1866. The claimants made application immediately upon the seizure for permission to have the vessel delivered to them upon executing the usual bond, but the application was refused by the district court. The case was first tried before the district judge, Judge Betts, in March and April, 1866. On the 13th of July, 1866, he delivered an opinion condemning the vessel on the ground that an intent had existed on the part of her owners to dispatch her from the United States to be employed in hostile operations in favor of Chile against Spain, in pursuance of a prior arrangement for that purpose. After the decree of condemnation Judge Betts, on the 20th of July, reversed his decision that the vessel should not be bonded and she was delivered to her owners on executing the ordinary bond given in similar cases. On appeal the case was tried in the circuit court before Judge Nelson in November, 1867, and he reversed the decree of Judge Betts and ordered the dismissal of the proceedings for the reasons, first, that there was no sufficient evidence of any arrangement to sell the vessel to Chile, even if such sale would have been unlawful; second, that the owners had the right to send out and sell the vessel to any purchaser that might be found; and, third, that the testimony of the witnesses for the Government (against which no rebutting evidence had been offered) was to be received with distrust and suspicion, and failed to make out a case. From this decree of the circuit court an appeal was taken by the Government to the Supreme Court of the United States, which appeal was abandoned November 9, 1868. The damages resulting to the owners of the *Meteor* from her seizure, particularly those occurring by reason of her detention for six months in the actual custody of the marshal of the court, the petitioners claim should be paid by the Government, and the committee have arrived at the conclusion that their claim is just and reasonable, under the circumstances, and should be allowed. The committee are aware that in legal proceedings for the forfeiture of property for alleged

violation of law the ordinary rule is that a certificate of probable cause relieves the Government from all responsibilities for damages, even if there should appear to have been no real cause for the seizure, and the damage must fall upon the innocent owner of the property. This general rule, although operating harshly in many instances, is sustained by the consideration that if damages were to be paid in every case of innocence there would be no end to such claims. Damages should be paid by the Government only in exceptional cases of special character and of peculiar hardship.

The circumstances which make the case of the *Meteor* an exception and seem to require the interposition of Congress, in which alone is vested the discretion to act, are obvious:

1. The prosecution against the *Meteor*, although in the form of legal proceedings in court, was, in fact, the action of the executive branch of the Government. The owners claim that they were made the victims of a supposed diplomatic exigency on the part of the United States; that the case of the *Meteor* was utilized, or sought to be utilized, to the diplomatic advantage of the United States. At the time it arose the United States were engaged in a diplomatic controversy with Great Britain, growing out of the fact of the *Alabama* and other Confederate cruisers having been built and fitted out in English ports. It therefore became important to exhibit the United States in the most favorable light possible as vindicators of the duties of neutrality.

Impelled by these public considerations, the Government was too forgetful or too indifferent to the interests and rights of the owners of the *Meteor*. The proceedings seem to have been guided, controlled, and terminated not by the natural and ordinary action of the district attorney and the courts, but by instructions and decisions of the political department of the Government at Washington.

2. Not only was the proceeding political and not judicial in its character, but the refusal to bond the vessel, from which refusal the principal damage arose, was an unusual and extraordinary proceeding; and it is impossible to resist the conclusion that the refusal in this case was from political and not from legal considerations.

Bonding of vessels or other property seized under legal process is almost a matter of course. It has been constantly done, even in the case of vessels charged with intention to violate the laws in regard to the African slave trade.

In arguing the motion to bond, District Attorney Courtney said:

I oppose this motion not only because I deem it my duty in my official capacity to do so, but also under instructions from the State Department, which I will read and make part of my argument in the case.

The fact which conclusively marks the proceedings as political and not judicial is that Judge Betts, while the presumption of innocence existed against the vessel, refused to bond her, but simultaneously with his decision adjudging her guilty he allowed her to be bonded. The object of the proceedings before him, if purely legal, was to forfeit the vessel and place the proceeds in the United States Treasury. In such a case a judge might in accordance with the rule in prize cases deem it the proper course to refuse to allow bonding in order to place the proceeds of the property directly into the Treasury, or he might deem it judicious to allow bonding and to continue the proceedings, relying upon the bond in case of forfeiture. But Judge Betts having in this case once decided that he would proceed against the property, and not upon bond, and having reversed this decision and allowed a

bond to be given just at the moment when he adjudged the vessel guilty and ordered her to be sold and the proceeds placed in the Treasury, the conclusion is irresistible that he was in fact performing political functions, and that when the political exigency was passed he reversed his decision not from legal but from political considerations. If this be so, the owners of the *Meteor* are clearly entitled to protection and compensation for their injuries resulting from the refusal to bond.

The claim of the owners of the *Meteor* to be compensated for their actual damage is sustained by numerous precedents.

In England they are recent, explicit, and directly to the point. They cover much more than the case of the *Meteor*. It is not alleged and was never pretended that the *Meteor* was built, like the *Alabama* or the *Laird* rams, with the intent of violating the neutrality laws of the country in which she was constructed. The English Government, however, in those cases uniformly and distinctly recognized the necessity of guarding private rights and conceded the liability of the Government in case of their infringement. Even in a case so utterly devoid of merits as that of the *Alabama*, Lord Palmerston used the following language on this point in Parliament:

When a vessel is seized unjustly and without good grounds, there is a process of law to come afterwards, and the Government may be condemned in heavy costs and damages. \* \* \* I have myself great doubts whether, if we had seized the *Alabama*, we should not have been liable to considerable damages. (Hansard's Debates, vol. 170, p. 91.)

Subsequently the same Government did seize several vessels (though in no such case of hardship as that of the *Meteor*). One of the vessels so seized was the *Alexandra*, which was taken under circumstances calculated to excite the gravest suspicions.

This vessel was finally released to the claimants, after a decision of the House of Lords in their favor, and £3,700 sterling, damages and costs, were paid by the Government. (See memorandum attached to Earl Russell's letter to Mr. Adams, dated November 2, 1865, Diplomatic Correspondence, 1861, Part I, p. 636.) The liability of the English Government in such cases was thus acknowledged, and the correctness of the opinion expressed by Lord Palmerston established. In every other case which has arisen in England, the Government, after making the seizure, has compromised the claimants' demands for damages by the purchase of the property seized. The most notable instance of this course of proceeding was in the *Laird* rams, where, after the claimant had given notice of a demand for damages, the rams were purchased by the Government at a cost of £225,000 sterling, and subsequently, according to the statement of British naval officers, proved nearly worthless. These vessels, wholly unlike the *Meteor*, had been originated and built in flagrant contemplated violation of the laws of Great Britain. Hardly a pretense at concealment was vouchsafed, and a very large part of this purchase money, exceeding \$1,100,000 in gold, should properly be looked on as an indemnity for damages.

In America the precedents on the subject are numerous and decisive as to the principle. The leading case is that of the *American Eagle*. (Am. St. Pap., Vol. XIX, pp. 450, 475, 601). The facts in this case are very like the facts in the case of the *Meteor*, though less oppressive to the claimants. The *American Eagle* was a large frigate-built ship, of English build, sold by French captors to American citizens, and pierced for 48 guns. In June, 1808, she was lying in New York,

ready for sea, with a large supply of provisions on board, with repairs and outfits all in man-of-war fashion, but without armament or crew. Under these circumstances, the French minister presented remonstrances to the Government, stating that the ship was destined for Pétion, one of the black chiefs of San Domingo, then in rebellion against France. On the 6th of June the collector of New York was informed, by letter from the Treasury Department, that, in the opinion of the President, the ship ought to be seized and libeled under the third section of the act of 1794 (which is identical with the third section of the act of 1818, under which the *Meteor* was seized and libeled), as being fitted out for illegal purposes, unless the owners should give satisfactory proof to the contrary. The ship was accordingly seized on the 10th of July, 1810. No attempt at the proof referred to was offered by the owners, and a committee of Congress subsequently reported that, in their opinion, no such proof could have been given, as the ship was in fact fitted out for Pétion. Owing to the indisposition of the district judge the cause was not tried and decided till August, 1812, and in the interval the ship remained in the custody of the marshal; she was then, by order of the court, restored to the claimants, the judge deciding that "if the vessel was destined for, or had been even sent to, Pétion, it would not have been in violation of the laws of the United States." Congress subsequently appropriated \$130,000 to indemnify the claimants in this case. (Acts 1818, ch. 45.)

The only other precedent for the principle under discussion necessary to cite at length is the case of Charles B. Hall (Twenty-seventh Congress, second session, Rept. No. 545). In this case the claimant Hall sought redress directly from the Government, as the *Meteor* claimants now do, on the ground that the proceedings against him "were commenced, conducted, and fully sanctioned by it." In this case certain blankets, the property of the petitioner, had been seized and libeled for alleged attempt to defraud the revenue. The committee, in this case, inferred the direct agency and authority of the Government in the seizure, and all subsequent proceedings, from the fact that "after notice of the seizure the Department sanctioned the prosecution of the libel." Their report closed with these words, singularly applicable to the case of the *Meteor*:

In the whole affair the finger of the Government is seen. Perhaps this rigor is called for by the reported attempted frauds on the revenue; and the committee do not design to censure or condemn it. But when it is discovered that agents of the Government have, under its authority, improperly occasioned injury or loss to individuals, it is the high duty of the Government to make prompt reparation.

The claimant was indemnified by act of 1843 (ch. 121, 6 Stat., p. 892).

The volumes of statutes contain many other laws granting compensation to parties injured by seizures where "the finger of the Government is seen in the transaction," which the committee do not deem it necessary to cite at length. The question in each particular case is within the sound discretion of Congress. The following is a list of many such enactments:

Act for compensation to the owners of the British ship *Perthshire* in consequence of her detention by the U. S. S. *Massachusetts* under the impression that she had evaded the blockade. Approved January 17, 1862. (12 Stat. L., p. 901.)

Same provision on account of "wrongful seizure and detention of the Spanish bark *Providencia*." Approved May 12, 1862. (13 Stat. L., p. 903.)

Same provision for damages for wrongful seizure and detention of British ship *Magicienne*. Act approved July 25, 1866. (14 Stat. L., p. 604.)

Act to indemnify W. C. H. Waddell, marshal of southern district of New York, for damages obtained against him for seizing quantity of brandy. Act approved June 30, 1834. (6 Stat. L., p. 524.)

Act to indemnify John Hone & Sons for an illegal seizure of teas. (6 Stat. L., p. 556.)

Act to indemnify for capture and detention of ship *Niger*. (1 Stat. L., p. 724.)

Act to indemnify for capture and detention of schooner *Amphitheatre*. (6 Stat. L., p. 47.)

Act to indemnify for capture of schooner *Charming Betsey*. (6 Stat. L., p. 56.)

Act making allowance to collector of New York for judgment recovered against him for seizure of ships *Liberty* and *Two Marys*. (3 Stat. L., p. 423.)

Act to indemnify collector of New York for damages for seizure of vessels for supposed violation of nonintercourse act with France. (6 Stat. L., p. 150. Case of Joshua Sands.)

Act to indemnify Captain Stockton for capture of ship supposed to be engaged in slave trade. (6 Stat. L., p. 288.)

Act to indemnify the collector for judgment recovered against him for seizing a French vessel. (6 Stat. L., p. 307.)

Owners of certain vessels sunk at the mouth of Baltimore Harbor, paid for their detention. Act approved April 26, 1822. (6 Stat. L., p. 265.)

Act to pay judgment against John Steele, collector of Philadelphia, obtained against him for his refusal to grant a clearance to a Spanish brig under instruction from the Department of State. Act approved May 1, 1820. (6 Stat. L., p. 241.)

Act to pay Lippincott & Co., of Philadelphia, for damages sustained by them in consequence of the illegal seizure of teas, made by the collector of that port under the orders of the Secretary of the Treasury. Act approved July 14, 1832. (6 Stat. L., p. 511.)

Act to pay judgment against special agent of Post-Office Department. (6 Stat. L., p. 750.)

Cyrenius Hall (8 Laws, p. 784).

Duval v. Carnes (6 Stat. L., p. 466).

George Johnston (6 Stat. L., p. 373).

See also House Report No. 690. Twenty-ninth Congress, first session, to accompany House bill No. 462, on the claim of John Pickett et al., owners of brig *Albert*.

In view of all the circumstances of the case, the committee believe it to be the duty of Congress to make provision for the compensation of the owners of the *Meteor* for the damages sustained by the unlawful detention of the vessel.

The original intention in her construction had no possible reference to any violations of the neutrality laws, but was pure and patriotic; neither in law nor in fact, as it now appears, was there any reason, unless political or diplomatic, for seizing and detaining the vessel. The owners in their action consulted the late Governor John A. Andrew and George Benis, esq., as to the disposition which could lawfully be made by them of a vessel which could be of little use for ordinary commercial purposes, and while following their advice they were made the sufferers by proceedings in behalf of the Government which must be considered partly, if not wholly, political in their character, and which, even if required by the exigencies of the Government, carried with them "the high duty of the Government to make prompt reparation."

The committee now only recommend the action indicated by Judge Betts in his decision refusing to bond the vessel which entailed the heavy loss upon her owners. His language in closing his opinion was as follows:

"To the suggestion of the hardship of the case to the claimants, in case of an acquittal of the vessel on trial, the answer is that it is not improbable that the policy adopted by Congress of holding the vessel in custody to secure the rigid observance of the neutrality laws would be considered by the Government as furnishing ground for making compensation for the loss and damage caused by an unwarranted prosecution."

JOINT RESOLUTION relative to the steamship *Meteor*.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the memorial of Robert B. Forbes, John M. Forbes, W. H. Aspinwall, A. A. Low & Bros., Leonard W. Jerome, E. B. Ward, M. H. Simpson, James Lawrence, H. S. Russell, and Theodore Lyman, executors; Richard S. Rogers, J. G. Cushing, W. B. Bacon, J. P. Bailey, James Davis, and J. F. Tuckerman, owners of the steamship *Meteor*, built to be tendered to the Government for the pursuit of the rebel cruiser the *Alabama*, and wrongfully seized and detained at New York in 1865, by authority of the United States, and all papers relating thereto, be referred to the Court of Claims for examination and the allowance of the amount of damages actually sustained by said owners by reason of such wrongful seizure and detention; the judgment rendered by said court to be paid out of the appropriations duly made to pay judgments rendered by said court.

## FORTY-THIRD CONGRESS, SECOND SESSION.

February 16, 1875.

[Senate Report No. 659.]

Mr. Frelinghuysen, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the petition and claim of George W. Lake for \$35,000, to indemnify him for alleged damage inflicted on him by Willie P. Mangum, United States consul in Nagasaki, and Charles E. De Long, United States minister, etc., at Japan, have had the same under consideration, and ask leave to submit the following report:

On September 12, 1860, George W. Lake was registered at the United States consulate at Nagasaki, and, up to the time of his departure from Japan, in 1871, was engaged in business there. It is from complications arising in his business affairs and judicial determination of these disputes that Mr. Lake considers himself wronged and for which alleged wrongs he asks redress and compensation in the sum stated.

In his petition Mr. Lake only states his case, and refers Congress to the files of the State Department for documentary proof to substantiate it. The committee requested the Department to furnish such evidence in this case as might be in its possession, and that evidence was before the committee. A careful examination of these papers establishes the following matters of fact:

On September 30, 1866, H. Fogg & Co., of Shanghai, China, auctioneers, sold, for account of one J. S. Baron, a flour mill. The purchasers were C. R. Simmons, R. J. McCaslin, and H. Fogg & Co., and they owned each a third of the mill. The property was shipped to Nagasaki and was under the control there of McCaslin, who agreed with George W. Lake (1) that Lake & Co. should erect the mill on a lot of G. W. Lake, at Namonihua, and then either sell it or operate it for the joint advantage of himself and the other owners; (2) that such moneys as might be necessary to erect and start the mill were to be advanced by Lake, and refunded to him in case McCaslin effected a sale; and (3) that if the mill were sold by mutual consent, "then each to stand one-half of the profit or loss." No outside party was to have anything to do with the mill unless it was agreeable to Lake.

A quarrel soon arose between Lake and McCaslin, and both attempted to sell the mill, under the provisions of the agreement just referred to.

Willie P. Mangum, then consul of the United States at Nagasaki, ordered Lake to desist from any attempt to sell or remove the mill until the owners, or parties claiming ownership, could be heard from. In the meantime Mr. McCaslin (against whose efforts to sell Mangum does not appear to have interposed any objection) sold the property to Adrian & Co., a Belgian firm, who bought it for removal to Osaka for certain Japanese. Mangum swears—in Lake's action against him subsequently—that he advised and urged the partners, Lake and McCaslin, to keep their disputes out of court, and at last succeeded in inducing them to submit the whole subject to an arbitration. This they did under date of April 7, 1869, and the decision of the board was to be final and without appeal.

Adrian & Co. began the removal of the machinery during the sittings of the arbitrators. Lake opposed this removal until his claim was settled. He went to the mill and took the key away from the workmen, and warned them to stop. Adrian & Co. appealed to the United States consular court to enforce the agreement which they claim existed between Lake and themselves, which permitted the removal of the property purchased by them, and also for damages caused by the delay occasioned by Lake taking away the key and retaining it. Mangum decided this case in favor of the plaintiffs, adjudging damages against Lake in the sum of \$400, this being the cost to the plaintiffs for the charter of the vessel on which the machinery was being loaded, at \$40 per day, for ten days' delay caused by act of Lake. The court also ordered Lake to deliver up the key to Adrian & Co. He refused to do so, and was punished by fine and imprisonment for contempt. He still refused, and was again punished in like penalties for persistent contempt of court. The order was then complied with, and the work on the removal of the mill proceeded.

The arbitrators finished their work, and provided for the distribution of the net sum produced by the sale of the mill, \$5,500. Of this amount, \$2,971.57 was awarded to Lake for expenses incurred in putting up the mill, in conformity with the article of agreement, McCaslin having effected the sale. The residue, \$2,528.43, was ordered to be divided equally between Lake and McCaslin.

Nearly two months after this award Adrian & Co. received the purchase money from their clients at Osaka, and notified Mangum of its receipt. Mangum instructed them to pay over to Lake the specific sum awarded him for outlay on the property, and to hold the balance, \$2,528.47, pending the investigation of a claim preferred against it by Fogg & Co., of Shanghai, through their agent and attorney, J. F. Twombly. McCaslin made an amicable settlement with Fogg & Co., by paying \$400 in satisfaction of their claim as against him.

As Lake, the petitioner, does not complain of its nonpayment, the assumption is justified that it was divided in conformity with the award of the arbitrators.

Mr. Lake now complained to the Department of State that he had been wronged by the consul, Mr. Mangum. Mr. J. C. B. Davis, Assistant Secretary of State, replies "that consuls are not exempt from prosecution because of their official position, but may be proceeded against like other persons when within reach of judicial powers." Mr. Fish addresses Mr. Mangum that Hon. B. F. Butler has submitted papers, on behalf of George W. Lake, alleging that the consul had injured his constituent. Mr. Fish, in his reply to Mr. Butler, says that certain papers requested in the case are not a part of the records of the Department, and adds that if they were, they could have no

bearing on the case, for the tenth section of the act of June 22, 1860, makes the judgment of consuls, with the aid of assessors, in civil suits final.

Being estopped by law from an appeal from the decision of the consular court, Mr. Lake sued Mr. Mangum before the ministerial court, Hon. Charles E. De Long, United States minister, etc., for damages, to wit: (1) for loss caused to said Lake by the abuse of his powers on the part of the consul, \$1,500; (2) for false imprisonment (Mr. Dent, United States marshal, being made a party defendant to this suit), \$5,000; (3) libel alleged to be contained in an official dispatch from Mr. Mangum to the Hon. J. C. Bancroft Davis, of the Department of State. In these several suits Mangum demurred to the jurisdiction of the court. Mr. De Long was in doubt as to his proper course; for he had heard a case which he describes as similar to these, and the Department had neither approved nor disapproved of his course. Besides, the new consular regulations received in Japan in the meantime say distinctly: "The power to commence civil and criminal proceedings is vested in consular officers exclusively." The minister therefore asked for instructions, and refused to proceed until these reached him.

The governor made a formal demand for Lake's expulsion under the seventh article of the treaty between the United States and Japan, for improper conduct toward a woman named Toka. Mangum issued the order, giving Lake three months to wind up his affairs and go. Mr. Lake complained that his suits could not be tried in the short time allowed him; that the delay in their hearing was not of his seeking, and that it was beyond his control. On this C. O. Sheppard, United States chargé d'affaires, suspended the order for his expulsion—as to time—for an indefinite period, and the Secretary of State approved both the order expelling Lake, issued by Mangum, and its suspension by Sheppard. Lake failed to take advantage of Sheppard's order. He claims now that he did not know of its existence, and yet admits that he did not obey the order of expulsion, although he knew that disobedience subjected him to loss and punishment. He was ordered to leave in three months after July 7, 1871, to wit, on October 7, 1871. By his own admission, contained in the petition now under consideration, he did not leave Japan until the 23d of October, 1871. Leaving, he appointed his brother Edward his attorney to attend to his affairs. De Long heard the suits against Mangum. The decision was adverse to Lake, and Lake appealed to the United States district court of California. Of this appeal the committee have no knowledge from anything submitted for their consideration.

Mr. Lake now appeals to Congress for relief and indemnity in the sum of \$35,000. It is not perceived by the committee that the United States is liable for claims against its officers after these have been submitted to the judgment of the courts, or at any time while such officers are amenable to law for acts which are supposed to render them liable to prosecution and penalties. Nor can they admit the principle which an approval of Mr. Lake's claim would go far to establish. The courts are open to Mr. Lake. One has passed upon his causes, and even now the committee are left under the impression that they are pending in another court.

From this review of the testimony before them the committee have arrived at the conclusion that the claim of George W. Lake is baseless and that his petition should be denied. They therefore urge its rejection.

United States Ministerial Court in and for the Empire of Japan.

GEORGE WILKINS LAKE, PLAINTIFF.	} Action No. 1 for the recovery of damages in the sum of \$1,500.
WILLIE P. MANGUM, DEFENDANT.	

STATEMENT OF THE CASE.

In this action the plaintiff charges that in the month of April, 1869, one McCaslin and himself entered into an agreement to refer certain differences then existing between them respecting their ownership in a certain flouring mill, situated at Nagasaki, in Japan, to Messrs. J. U. Smith and Johannes Brunier, as arbitrators, empowering them (in the event of their being unable to agree) to select a third person to act with them as an umpire.

That said arbitrators were unable to agree, and did select one John Maltby to act as such umpire.

That while this arbitration was proceeding, and before any award had been made, this defendant willfully and maliciously, and with the intent to injure this plaintiff, did, as United States consul at Nagasaki, interfere with and prevent an award being made by these arbitrators by wrongfully and unlawfully issuing an order to said umpire directing him to withhold giving an award; which order was obeyed, and thus for a long time the award was delayed, the plaintiff kept out of his money; and further, that this action caused him, the plaintiff, to be sued in consular court, whereby the plaintiff was caused damage and loss in the sum of \$1,500.

The answer of defendant, Mangum, admits the making of the order complained of, etc., but denies that this action was wrongful or malicious, or that plaintiff was thereby caused any loss or damage whatever.

OPINION.

From the evidence adduced in this action, it appears that this petitioner and McCaslin were the joint owners and tenants in common of a flouring mill, purchased in Shanghai, brought to Nagasaki, and there erected on land belonging to and in the possession of the plaintiff.

That this mill was conducted for some time by this plaintiff, when some trouble and misunderstanding arose between McCaslin and himself about its business, and also regarding the amount of their respective interests in the mill itself.

Some talk about commencing legal proceedings was indulged in by the parties, but at the instance of this defendant the agreement to submit their differences to arbitrators was entered into. Under this agreement the plaintiff selected Mr. Smith as his arbitrator, and McCaslin chose Mr. Brunier, who being at first unable to agree, selected Mr. Maltby as umpire. The reason why these arbitrators could not at first agree it appears was because a certain written agreement entered into between McCaslin and Lake governing their partnership relations had been lost or mislaid, and for a time could not be produced. The date of the agreement to submit to an arbitration is April 7, 1869. It bears the signature of both Lake and McCaslin, and also of this defendant, Mangum, as a witness thereto. It fairly appears that this was not only entered into by the advice of defendant Mangum, but that it was the understanding and intention of all parties that the whole proceeding should be under the general jurisdiction and control of the consul. This is shown by the fact that the agreement was lodged with him, and applications were made to him from time to time by this plaintiff, as well as others in the interest, for his official assistance and instruction.

In November, 1868, this defendant addressed a note to this plaintiff, directing him not to sell or remove the mill until certain parties who claimed to be interested in it could be communicated with. In explanation of this action on his part, the defendant testifies that he did this because he had been advised of a claim made by H. Fogg & Co., of Shanghai, to an interest in the property. It may well be questioned whether, upon mere information of such a nature, this defendant had any authority to take such action, giving it the force of an order; but this is a matter immaterial now to consider, inasmuch as it is not assigned in the petition, nor was it proven during the trial, that this action of defendant caused the plaintiff any loss or damage, or in fact that this plaintiff paid any attention to the direction at all, but, on the contrary, it seems that he did not, on the same day that he entered into the agreement for an arbitration he authorized McCaslin to sell the mill, which McCaslin at once did, through the house of Adrian & Co., at Nagasaki, for the sum of \$5,500, payable when delivered at Osaka by Messrs.

Adrian & Co. The proceeds derived from the sale to be held by Messrs. Adrian & Co. in trust for Lake and McCaslin, to be paid by them as directed by the judgment to be rendered by the arbitrators. This sale and arrangement as to the delivery of the mill and disbursement of the proceeds this plaintiff notified this defendant Mangum about, and advised him that he had assented thereto.

On the 15th of April following this the defendant addressed a note to Maltby, the umpire, informing him that H. Fogg & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject." The making of this order by defendant is the subject of plaintiff's complaint in this action, and hence it deserves special consideration.

Whether it had any effect at all upon Maltby in preventing him from deciding the case is not proven, except by the evidence of defendant Mangum, who testifies that Maltby obeyed it, that is, that he did not render any decision; but there is not a particle of evidence offered to show what his decision would have been if he had rendered one. It is certainly as fairly presumable that his decision would have been unfavorable to plaintiff as it is that it would have been favorable; hence this action of this defendant may have been beneficial to plaintiff instead of injurious. It seems to be clear that, if this arbitration proceeding was by the parties or the law placed under the supervision and control of this defendant, he had a perfect right to stay this action temporarily for any reason that seemed to him to be a sufficient one. If, on the contrary, he had no such legal jurisdiction over them, his note to the umpire was without any legal force or binding effect, and the umpire remained as fully authorized to proceed as if no such note had been written. That this plaintiff, as well as all others in interest, considered the matter as being under the immediate supervision of Mr. Mangum is plainly shown by the fact that after this sale was made, and while Adrian & Co. were proceeding to remove the mill, he, Lake, becoming alarmed lest his interests might suffer, went at once to this defendant and solicited him to interfere to prevent its removal until he, Lake, should be further secured. Acting at once upon this request, this defendant, Mangum, directed Adrian & Co. to desist from removing the mill until further ordered by him. Messrs. Adrian & Co. did desist, and immediately, that is, on the 15th day of April, executed and delivered to Mr. Lake their written promise to hold the proceeds arising from the sale of the mill subject to the award to be made by the arbitrators.

This written assurance Mr. Lake at once exhibited to Mr. Mangum, and announced his complete satisfaction with it, whereupon Mr. Mangum authorized Adrian & Co. to proceed with the removal of the mill. It is certainly not very consistent for this plaintiff to insist upon the position that this defendant had no rightful charge of or jurisdiction over this property or over the arbitrators when on the very day that the order to the umpire was made by this defendant, of which in this action plaintiff now so strongly complains, he was himself seeking this defendant's intervention in the same business and profiting by it.

On the 15th of April, only two days after the last action mentioned, it was reported to Mr. Mangum that Mr. Lake was interfering with and preventing the delivery of the mill, whereupon he (Mangum) addressed a note to Mr. Lake, advising him that Adrian & Co. had preferred such complaint; that, if he was so doing, he was violating his agreement, and directing him to desist, or otherwise he would be liable to an action for damages.

This instruction Mr. Lake seems to have entirely disregarded, and on the 24th of April Adrian & Co. brought an action against him for damages and to compel him to perform his agreement with reference to the removal of the mill. This action was tried on the 12th of May, and resulted in a judgment being rendered against Mr. Lake for damages in the sum of \$400 and directing him to allow the removal of the mill to proceed. In the conduct of this trial this defendant was associated with three American residents of Nagasaki, drawn as assessors, all of whom joined with Mr. Mangum in the judgment. This was the only action that was commenced against this plaintiff about this property, and I am unable to find in all of the testimony any tending to show that Mr. Mangum's order to the umpire directing him to delay making an award had any effect whatever in inducing the commencement of this action or in any manner affecting its result.

The claim of H. Fogg & Co., mentioned by their agents to Mr. Mangum in the fall of 1868, and which caused him to instruct Mr. Lake not to sell the mill until claimants against it could be heard from, was formally presented to him and filed on the 11th day of May. It proved to be a claim to the ownership of an interest of one-third part of the mill. This claim the plaintiff settled privately and voluntarily. In a letter written by Lake to McCaslin, of date July 27, 1869, in speaking of this Fogg claim, he says: "As I said before, the arbitration agreement was to be final, and it is decided now what is to be done. Mr. Twombly's claim (the Fogg claim)

is no good only for one-third: your third will stand good, for all that I can see." etc. Thus it is proven that there was justice in the demand that Mr. Mangum was endeavoring to have investigated before allowing this mill to be sold and removed.

Relative to the further proceedings and final action of the arbitrators, it is proven that on the 27th of May, 1869, the two original arbitrators, Smith and Brunier, agreed upon and made an award, which was filed in the consulate and fully and promptly enforced. In making this award Mr. Maltby, the umpire, did not join, as it was not necessary for him to do so, as Smith and Brunier were enabled to agree at once upon the discovery and production before them of the written contract of partnership before mentioned, which was supposed to have been lost.

Thus it appears that within less than two months from the time when the agreement to arbitrate was made, an award was rendered in which Mr. Smith, this plaintiff's selected referee, joined. There seems about all this to be no appearance of unusual delays having been sustained: and as justice to all parties was, beyond question, meted out, greater expedition, if productive of any different results, could only have produced wrongful ones.

This defendant, in advising all of the claimants to this mill property to settle their difficulties out of court, by arbitration or otherwise, and in lending the full force of his official position in securing substantial justice for all, and preventing a multiplicity of actions at law from being commenced, was obeying and carrying out both the letter and the spirit of the statutes of the United States of America on the subject. Section 19 of the act of 1860 provides as follows: "It shall be the duty also of the said ministers and the consuls to encourage the settlement of controversies of a civil character by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; a majority of whom shall have power to decide the matter," etc.

Whatever of technical informality there may have been in any of these proceedings was invoked and assented to as much by the plaintiff as by any of the other claimants, and did not result in damage or injury to any.

In brief, I fail to find any evidence tending to show that this plaintiff sustained any damage, or that any action taken by this defendant was without his strict line of duty. An action more entirely barren of merit it has never been my fortune to examine.

#### JUDGMENT.

It is ordered, adjudged, and decreed that this action be, and the same is hereby, dismissed, and that this defendant have and recover of and from this plaintiff his proper costs disbursed in this action, taxed at the sum of            dollars, and that execution therefor.

Ordered accordingly.

Done at Yokohama, this 19th day of December, 1871.

C. E. DE LONG.

*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

#### United States ministerial court in and for the Empire of Japan.

GEORGE WILKINS LAKE, PLAINTIFF,	} Action of libel to recover damages in the sum of \$25,000.
<i>v.</i>	
WILLIE P. MANGUM, DEFENDANT.	}

#### STATEMENT OF THE CASE.

Plaintiff in his petition in this action charges that the defendant, while United States consul at Nagasaki, wrote and published certain false and libelous statements respecting him, in a dispatch addressed to Hon. H. Fish, Secretary of State, dated July 7, 1870, and claims damages in the sum of \$25,000.

Defendant in his answer admits writing a dispatch to the honorable the Assistant Secretary of State, in which the language mentioned and complained of in the petition was used, but he denies that these statements are libelous or false, or uttered with any intention to injure this plaintiff, and further avers that his dispatch was an official and privileged communication, and denies that he otherwise uttered or published said statements except by having sent said dispatch.

OPINION.

The only evidence adduced upon the trial of this action in addition to what was adduced upon the trial of the two former causes was the production of a copy of the dispatch mentioned in the petition and a copy of a letter from the honorable the Assistant Secretary of State to Hon. B. F. Butler and others, showing that the Secretary had forwarded a copy of said dispatch to Mr. Butler.

Technically, plaintiff's case fails in his failure to prove that such a dispatch was addressed to the person named in his petition, viz. Hon. H. Fish; but inasmuch as this point was not raised by defendant, this court will proceed to pass upon the case on its merits.

It is undoubtedly true that in ordinary correspondence, by common-law rules, language such as is contained in this dispatch is actionable and is presumptively false and malicious, but such a rule of presumption does not apply to privileged communications, as will be seen by the following references:

"Communications made bona fide in performance of a duty or with a fair and reasonable purpose of protecting the interests of the party using the words are privileged. (*Somerville v. Hawkins*, 12 Jur., 450, per Maule, J., 2d Eng. Law and Eq. R., 503.)

"Where the relation between the parties by whom and to whom the communication is made is such as to render it reasonable and proper that the information should be given, it will be regarded as privileged. (*Lewis et al. v. Chapman*, 16 N. Y. R., 374.)

"A communication which would otherwise be actionable is privileged if made in good faith upon a matter involving an interest or duty of the party making it, though such duty be not strictly legal but of imperfect obligation, to a person having a corresponding interest or duty. (*Van Wyck v. Aspinwall*, 17 N. Y. R., 190.)"

As the evidence shows that Mr. Mangum, while consul of the United States at Nagasaki, wrote this dispatch to his superior officer upon his demand for him to inform him fully with regard to all of his proceedings had in connection with this plaintiff, it is at once seen that it falls fully within the rules of law above quoted, and therefore that it is to be regarded as a privileged communication.

In the trial of actions of this nature, the burden of proof remains on the plaintiff to prove actual malice if the communication is a privileged one, regardless of the nature of the language used, as will be seen by reference to the following citations:

"The rule, observes Lord Campbell, is, that if the occasion be such as repels the presumption of malice, the communication is privileged, and the plaintiff must then, if he can, give evidence of actual malice. If he gives no such evidence, it is the office of the judge to say that there is no question for the jury, and to direct a nonsuit or a verdict for the defendant, etc. (*Taylor v. Hawkins*, 16 Queen's B., 321; *Addison on Wrongs*, p. 684.)

"A communication being shown to be privileged, the burden of proof is on plaintiff to show actual malice. (*Somerville v. Hawkins*, above quoted; *Greenleaf on Evidence*, vol. 2, sec. 421.)

"If from the plaintiff's own showing it appears that the words were not used in an actionable sense, he will be nonsuited. (*Ib.*, sec. 423.)"

Plaintiff in this action did show this by proving that defendant Mangum, as a consul and a judge of a consular court, uttered these words solely in a dispatch that may be termed a report of his proceedings to his superior officer, as he was in duty bound to do upon his request.

The sending of a copy of this dispatch to Mr. Butler and others by the honorable Secretary is not a matter affecting this defendant or increasing his liability in any manner, as there is no evidence that such a proceeding on the part of the honorable Secretary was usual or probable, or that defendant expected any such course to be pursued, the rule governing such matters being only and correctly stated in the following citation:

"When the publication is by a private letter directed and sent by mail to a particular person the defendant is liable for the damages caused by any further publication of the letter by the person to whom it is addressed or by other persons after it comes into the hands of the person addressed if such publication is a probable and natural consequence of the first sending the letter. (*Miller v. Barilett*, 6 Cush., 71.)"

Plaintiff having failed to prove actual malice on defendant's part in uttering these words or their falsity or that plaintiff sustained any actual damage by their utterance his case remains almost entirely unsupported by any evidence.

Although somewhat irregular, the court will notice and reply to an argument made by plaintiff's counsel during this trial to the effect that defendant had made

an order directing this plaintiff to leave this Empire, and he, the plaintiff, fearing that if he did not obey it he would be at the mercy of the Japanese authorities, did leave, and thus was deprived of the advantage of giving his own testimony upon these trials. In reply to this it is a sufficient answer to say that plaintiff's counsel might have taken his client's testimony by deposition, if he had desired to do it, before his departure; but a still more complete answer to this is that this plaintiff, by his counsel, applied to this legation and obtained an order vacating the one made by Mr. Mangum, all of which was done prior to Mr. Lake's departure from Japan, leaving him as fully and securely at liberty to remain here as he ever was. If either plaintiff or his counsel had inquired at this legation they would have learned the fact. Hence, if his absence is a loss or hardship, it is one that must be considered as voluntarily caused by himself.

## JUDGMENT.

It is hereby ordered, adjudged, and decreed that this action be, and the same is hereby, dismissed; the defendant to have and recover from the plaintiff his proper costs and charges disbursed by him in this action, taxed at the sum of        dollars, and that execution issue therefor.

Done at Yokohama, December 19, 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

United States ministerial court in and for the Empire of Japan.

GEORGE WILKINS LAKE, PLAINTIFF,	} Action for false imprisonment. Amount of damages claimed, \$5,000.
<i>v.</i>	
WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS.	

## STATEMENT OF CASE.

The petition in this action charges the defendants with having arrested and imprisoned this plaintiff on two different occasions for the period of twenty four hours each time, and caused him, the plaintiff, to expend the sum of \$131.

That said imprisonment was unlawful, and done with the intention to damage this plaintiff; and that by it he was caused loss and damage in the sum of \$5,000.

Defendant Mangum, separately answering, admits that at the various times, and in the place specified in the petition, he, as United States consul, acting judicially, did authorize and direct plaintiff's imprisonment; but denies that his action was wrongful or unlawful, or done with any intention to cause this plaintiff damage or injury, but, on the contrary, avers that such action was taken by him in the enforcement of two judgments of his court, wherein plaintiff was adjudged to be guilty of a contempt of court, and sentenced to pay a fine and be imprisoned.

Defendant Dent, in his answer, also denies that his acts in the premises were unlawful or malicious; admitting that he arrested and imprisoned plaintiff, but averring that he did so as an officer of the consular court, in obedience to the lawful process of that court, so directing and addressed to him.

Both defendants deny that plaintiff sustained the loss or damage claimed by him, or any loss or damage.

## OPINION.

From the evidence adduced in this and the previous case, it appears that the judgment of the consular court at Nagasaki, wherein Adrian & Co. were plaintiffs, and G. W. Lake was defendant, directed the payment by defendant to plaintiff of the sum of \$400 damages, and also directed the defendant to deliver up the keys of the flour mill, and permit its delivery by Adrian & Co. to the purchasers. This judgment of the court was, at the time of its rendition, read to Mr. Lake, and evidently fully understood by him. At the same time the consul directed this plaintiff to obey it, which direction he (Lake) refused to comply with, as was shown to the court by affidavit, and was not denied by this plaintiff. An attachment was issued, directing that Mr. Lake should be arrested and brought before the court to show cause, if any he could, why he should not be punished for contempt in refusing to yield obedience to the judgment.

When he (the plaintiff) appeared before the court, he failed to show any sufficient reason for his action, and he was sentenced to pay a fine of \$50 and costs,

amounting to the sum of \$15.50 more, and he imprisoned for a period of twenty-four hours.

A commitment was issued accordingly, and executed by defendant Dent, acting United States marshal, who imprisoned plaintiff, and collected the fine, as directed by the writ.

After his (plaintiff's) discharge from imprisonment, under this first sentence, it was again proven to the court that he still remained contumacious, as he still refused to yield obedience to the judgment; whereupon he was again fined and imprisoned as before, and search warrant had to be issued by the court before the keys to the mill could be obtained, and the delivery of it proceeded with.

No evidence has been offered in this action tending to prove any fraud or irregularity in the judgment obtained by Messrs. Adrian & Co. against this plaintiff in the consular court. This fact, with the further one that it is a rule of law that all judgments of courts having jurisdiction are to be presumed to be regular until the contrary is proven, limits the matter to be considered in this action to the question of the regularity and legality of the proceedings taken by this defendant in enforcing the judgment by punishing plaintiff for contempt.

It is a well-settled rule of law that all courts in the performance of their lawful functions as incident to their judicial character have the authority to preserve order, decency, and silence in their presence and to enforce a reasonable degree of obedience to their mandates and decrees. By statute in most of the States contempt of court is defined to be disobedience to or resistance of a lawful order of a court or judge. In California it has been decided that "if a court having jurisdiction should issue an erroneous order, a disobedience of it is a contempt." (*Ex parte Cohen*, 5th Cal., 494.)

The reason for the stringency of these rules is manifest, viz. to discourage resistance of a personal nature to judgments and orders such as this plaintiff offered in this instance.

The jurisdiction of the consular court over Mr. Lake and the property at the time these proceedings were had stands unchallenged. Mr. Lake admitted it by entering the court, defending the action, and thus seeking for a judgment at its hands in his favor, which, failing to obtain, he refused to obey when adverse to his wishes. It certainly needs no argument to convince any person that he (Lake) was bound by that judgment, and that the court by summary proceedings could compel obedience on his part.

The course pursued by Defendant Mangum, as judge of the consular court, in attaching Mr. Lake for disobedience and punishing him for his contempt, was in accordance with the practice generally, so far as known to this court, throughout the United States. The punishment inflicted does not seem to have been at all excessive, and in the second instance was unusually moderate.

At the time these proceedings were held, no rules or regulations had ever been adopted in Japan governing the practice in consular courts of the United States. The defendant, Mr. Mangum, was left, as other consuls were, to follow the dictates of his own judgment and governed by a sense of justice and a general knowledge of the practice governing courts elsewhere in similar cases. It would be manifest injustice to the court below, in reviewing its proceedings in such a case as this, to hold it to strict conformity with subsequently adopted regulations. The proper course, in the judgment of this court, is to affirm the action of the court below if from the whole evidence it appears, first, that the court had jurisdiction, and, next, that it administered substantial justice.

From all the evidence it does conclusively appear that Defendant Mangum, in these proceedings and in all of his proceedings in relation to this mill property, was acting in the best of faith, with an honest purpose to secure the right of the claimants to it, and that his labors resulted in securing substantial justice to all.

The court has therefore no hesitation in finding the action of Defendant Mangum in causing the arrest and punishment of this plaintiff for his disobedience to have been fully justified.

As defendant Dent acted under regularly issued warrants from a properly constituted court having jurisdiction, he is clearly exonerated from all liability to the plaintiff.

Counsel for plaintiff in his argument of this cause strongly animadverted upon the conduct of Mr. Mangum as having been partial to Fogg & Co., to Adrian & Co., and to all others in interest except to this plaintiff, thereby seeking to show malice and ill will on the part of Mr. Mangum to this plaintiff. This court is unable to observe any sufficient evidence of any such feeling, nor does it consider that the record at all warrants this accusation.

When this plaintiff wished the delivery of the mill to be stopped until he should be secured in his rights, and applied to Mr. Mangum for assistance, it was at once accorded, and the delivery was not allowed to proceed until Mr. Lake notified Mr.

Mangum that such security had been given and that he was satisfied with it. Aliter that it was the duty of Mr. Mangum to compel him (Lake) to cease his interference and allow the delivery to proceed, that the rights of the other parties might be secured. Counsel also complains of Mr. Mangum's conduct in not attaching the mill when requested to do so by Mr. Lake. Counsel will remember that by no known laws an attachment is allowed for debts already secured. Mr. Lake's debt was then secured by the property being put in the hands of Adrian & Co., as trustees, for the benefit of himself and all others, to await the decision of the arbitrator.

From all the evidence, this court is fully satisfied that all damage sustained by this plaintiff was caused by his own perverseness. His remark made in the presence of Mr. Dent, and testified to by him, to wit, "I know I am wrong and foolish about this, but I will see it through; Ned [his brother] wants me to," reveals very truthfully where the malice in this matter existed.

#### JUDGMENT.

It is hereby ordered, adjudged, and decreed that plaintiff take nothing by this action, that the same be dismissed, and that these defendants have and recover of and from this plaintiff their proper costs and charges in this behalf extended and taxed at the sum of \_\_\_\_\_ dollars, and that execution issue therefor.

Done at Yokohama, this the 19th day of December, A. D. 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

#### *Statement of Mr. Lake.*

TOPSFIELD, MASS., October 20, 1870.

I have had the honor of acknowledging the receipt of W. P. Mangum's letter dated July 7, 1870, and beg leave to submit the following additional statements:

I have never signed any contract or entered into any contract, either verbal or written, with anyone for the delivery of the "flour mill," or sanctioned the sale of it, save what is expressed in my letter dated April 15, 1869. On the same date Adrian & Co. answered the letter, and did not accept what I had written, and contradicted their statements that they had made in the morning of the same date. W. P. Mangum wrote a letter, dated April 15, 1869, to Mr. John Maltby, who was acting as umpire, requesting him to withhold giving any award until further instruction from him. By this interference he caused all the trouble and expense. I considered that I had as good a right to protect myself, and wrote to Adrian & Co. that I declined to deliver up the mill until a final award of the arbitrators. There is no law to compel a man to deliver up his property, even if he has agreed to, until he has been satisfied. I deny that I brought the mill from Shanghai; never had anything to do with H. Fogg & Co. in regard to the receipt or management of the mill, save that when A. S. Fobes claimed to hold a power of attorney to sell the mill, I wrote to H. Fogg & Co. that I should sell the mill at auction. They said they should hold me responsible for damages.

The mill was brought to Nagasaki in the brig *E. W. Seyburn*, and consigned to W. M. Robinet or Case & Co., and stowed in a building occupied by Mr. Cherry. R. J. McCaslin came to Nagasaki empowered by a letter from H. H. Holcomb, a partner of H. Fogg & Co. (at that time), to sell the mill or to do the best he could with it. The most he could get offered was \$1,200. I received it from him under a written agreement. H. Fogg & Co. had no claim against me whatever or the money that I had expended for the benefit of all concerned in the mill. Their claim was against R. J. McCaslin and Captain Simmons, for the expense of shipping and storage. If H. Fogg & Co. made an amicable settlement with McCaslin in Shanghai, so far as they were concerned, why did not Mangum order the money to be paid over as per award of the arbitrators' decision given? Edward Lake had my written instructions not to settle unless he received the full amount awarded. It does not seem likely that he would sacrifice the \$100 unless he had been scared into it by W. P. Mangum's threats. Under such circumstances, W. P. Mangum's statement seems to be most glaringly preposterous. It may be true that the assessors did agree. If so, it shows a low and degraded principle. Article 10, June 22, 1860, of the acts of Congress, does not deny the right of an appeal from a case like this, denied me by W. P. Mangum at Nagasaki, Japan, May 12, 1869. No explanation was ever made to me regarding the acts of Congress in any case that I have had before the United States consul.

Even if Capt. E. Talman did commit himself in assaulting a Japanese boatman, he served his time in prison for the offense. The consul had no right to transport him out of the country in irons: it was the Japanese place to request him to leave. My brother offered to pay his passage to the United States. Capt. E. Talman I have known for about ten years: has been in my employ for a number of years. I have always found him to be a sober, honest, upright man; have never known him to ill-use anyone when it could be avoided. While in charge of my vessel he has been intrusted with large sums of money. With regard to my associates, they were few and far between. W. P. Mangum nor W. M. Robinet were no associates of mine, for the reason that I never found them worthy. They are birds of a dark species, who will not act honorably when it is for their interest so to do, always ready to do a mean action. As to W. M. Robinet, who appears signed as an assessor in the case that came off August 31, 1865, this document I never before saw, nor never knew its contents or purport, save what D. L. Moore said. It was never read to me; it may seem preposterous, nevertheless it is true. W. M. Robinet, for his fidelity to Walsh & Co., has always been an associate of the consuls. He was sentenced in Hongkong, a number of years ago, to two years' imprisonment for attempting to burn a ship and cargo bound into the port of Callao, South America. From Hongkong he had shipped a cargo of old rags and gunnybags, and insured it for silk. He failed to burn the ship, so got off with two years' imprisonment. He has always been a bitter enemy of mine, for the simple reason that I would have nothing to do with such a character. He has always been an intimate associate of the consuls. He, Robinet, was in business in opposition to me, and, of course, did his best to break me up. I deny that the ship *Anna Kimball* was smuggling or attempting to smuggle, or that I was implicated in trying to smuggle.

The *Anna Kimball* was chartered by me and in my name in Shanghai for the Prince of Kikgo, to load rice in a by-port for Higo. The ship entered and cleared at Nagasaki, and, by the advice of D. L. Moore, she was cleared for Yokohama. He was informed of the business. The vessel went to the bay to load the next day after the *Akino*, a British bark chartered for the same prince. The *Anna Kimball* was seized: the British bark went on her voyage and delivered her cargo at the port of destination: the *Anna Kimball* had to return to Nagasaki. I owned no part of her cargo, nor did I have any interest in it save my commission on the charter of the vessel. Previous to chartering the *Anna Kimball*, I had chartered the British bark *Valletta*, and the ship *Morse*; both loaded their cargo in the port of Nagasaki. The *Valletta* went to Yokohama, the *Morse* to Higo, a nontreaty port: she came back to Nagasaki. There was nothing said about smuggling. Since then, in the spring of the year, 1869, I chartered for the Japanese the British bark *Alice Yainter*, British bark *Amaree*, British schooner *Basalle*, American bark *Juan Rattray*, British schooner *Bobtail Nag*, and two or three other vessels, all loaded in the same bay as the *Anna Kimball*. There was never anything said about smuggling. I would state that when the *Anna Kimball* arrived off Nagasaki, D. L. Moore would do nothing to assist the vessel through the difficulty, and told the captain that his ship and cargo was confiscated, and advised him to clear out with the ship. The ship lay off the port about a week. The difficulty could not be arranged: so the captain determined to go to Shanghai and seek legal advice. On arriving at Shanghai he went to W. P. Mangum, who advised him to go down to the Rugged Islands, and there he till the difficulty could be settled. This was not satisfactory to me, as there was too much responsibility resting on my shoulders. I ordered the ship back to Nagasaki, which the captain was loth to do, as he had already engaged a pilot to take her down to the islands: so that, for fear he would not go to Nagasaki, I staid on board. It took twelve days to get back to Nagasaki, a distance that a vessel can run in forty-eight hours. On arriving at Nagasaki, I laid my case before Admiral Bell. William Robinet made himself very conspicuous in the affair, and wrote me seventeen letters which I refused to answer. D. L. Moore advised me to answer them: for refusing he shamefully abused me by improper language and threats. The Government brought a suit after she was towed in by the United States steamer *Yoming*. The vessel was fined \$1,000, which I had repeatedly offered to pay, both to the custom-house and to the consul. The money was not paid by the ship, but by the charterers, my principals: the cargo was not confiscated. Through this, the officers informed me that the Prince had given orders never to do any business with Americans: and also through this trouble was the cause of my getting the ten days' imprisonment, as D. L. Moore had stated before witnesses that all he wanted was to get a pretense and he would put Lake through, and Robinet made his boasts that he advised D. L. Moore to put me in prison: hence my imprisonment for ten days for what I was not guilty. The case, August 31, 1865, I pleaded guilty and pleaded justification, which was not listened to by the

court. For further particulars and copies of letters see papers transmitted under date of April 4, 1870, and November 26, 1867.

I very respectfully solicit a copy of the contract which W. P. Mangum says I entered into to deliver up the flour mill; also, a clean copy of the court records in every case that pertains to myself; also, copies of H. Fogg & Co.'s documents against the flour mill. I accuse W. P. Mangum of advising with Brujinnier, agent at Nagasaki for H. Fogg & Co., and arbitrator for R. J. McCaslin, how to make out the award in the flour-mill case. The amount of money that W. P. Mangum has swindled me out of, in his infinite authority, is, fine for refusing to deliver over the mill, \$400; cost of court, \$84.55; fine and costs of court called contempt, \$65.50; for the same contempt, \$69.50; also, \$400 awarded by arbitration that W. P. Mangum would not allow to be paid; total amount \$1,019.55.

Very respectfully, yours,

G. W. LAKE.

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

OCTOBER 21, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,  
*Justice of the Peace.*

[Revenue stamp.]

No. 17.]

UNITED STATES CONSULATE,  
*Nagasaki, April 15, 1869.*

SIR: The arbitrators in the case of G. W. Lake *v.* R. J. McCaslin, on account of flour ———, being unable to come to a satisfactory agreement, and having selected you as umpire to decide the case, I have to inform you that Messrs H. Fogg & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,  
*United States Consul.*  
G. W. LAKE.

To JOHN MALTBY, Esq.

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

OCTOBER 21, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,  
*Justice of the Peace.*

[Revenue stamp.]

COMMONWEALTH OF MASSACHUSETTS,  
*Secretary's Office Boston, October 22, 1870.*

I hereby certify that, at the date of the attestations hereto annexed, Joseph W. Batchelder was a justice of the peace for the county of Essex, in the said Commonwealth, duly commissioned and constituted; and that to all his acts and attestations as such full faith and credit are and ought to be given, in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.]

CHAS. M. LOVETT,  
*Deputy Secretary of the Commonwealth.*

LOWELL, November 11, 1870.

Respectfully referred to the honorable Secretary of State for his information.

BENJ. F. BUTLER.

*Mr. Mangum to Mr. Davis.*

CONSULATE OF THE UNITED STATES,  
*Nagasaki, July 7, 1870.*

SIR: I have the honor to acknowledge the receipt of your dispatch, No. 43, of May 20, 1870, with its inclosure, containing a note from the Hon. Benjamin F. Butler, a letter from certain parties, "selectmen" of Topsfield, and two letters from the brothers George W. Lake and Edward Lake, setting forth certain wrongs

that they complain of having received at my hands in Nagasaki. In reply I have to say, in the first place, that these two letters of the brothers Lake are most villainous perversions of the truth, and beg to submit the following explanation, to wit: In the spring of last year a suit was instituted in this consulate against George W. Lake, by Messrs. Adrian & Co., a Belgian firm in Nagasaki, to recover damages for the nonfulfillment of a contract and to compel fulfillment of the same. This contract was to the effect that Messrs. Adrian & Co. should sell on commission, for the sum of \$5,500, and remove the same, a certain "flour mill" situated on the premises of G. W. Lake, and owned by him and one R. J. McCaslin, of Shanghai, and retain this money in their hands until the dispute between Lake and McCaslin, as to the amount each was entitled to receive of the proceeds of this sale, should be decided by arbitration. In compliance with this, Messrs. Adrian & Co. effected the sale to certain Japanese residing in Osaka, and proceeded to remove it to be transported to Osaka. At this juncture, Lake, in defiance of his contract, stepped in and stopped the removal by taking the key from the agent in charge and locking up the mill. Hence the suit.

The case was tried before me, with the requisite assessors, on the 12th of May, 1869, and judgment given for the plaintiffs. The defendant contumaciously refused to comply with the judgment and obey the orders of the court. For this contempt he was summarily punished by a fine of \$50, and imprisoned twenty-four hours. He repeated his contempt after his release, and was again summarily punished in the same way.

The judgment of the court was enforced. The mill was removed and transported to Osaka, to be delivered to the purchasers. In due time the arbitrators who were to decide upon the respective claims of Lake and McCaslin made their award: and the price of the mill, which was stipulated to be paid on its delivery at Osaka, was received by Messrs. Adrian & Co. In the meantime a third party appeared, Messrs. H. Fogg & Co., of Shanghai, by J. F. Twombly, claiming an interest in this mill property, as part owner, and holding certain charges against it to the amount of some 1,200 taels, equal to about \$1,600, for auction expenses, stowage, etc., in Shanghai, whence Lake had brought the mill. The arbitration showed that Lake had expended a large sum of money in erecting the mill and running it, for which he had only been partially refunded by the proceeds of the sale of the flour, having the sum of \$2,971.57 actually paid out of his own pocket. This amount the arbitrators awarded to him, and the residue of the \$5,500, to wit, \$2,528.43, to be equally divided between him and McCaslin. The award was made on the 27th of May and the money for the mill received by Messrs. Adrian & Co. on the 15th of July following. They immediately informed me of its reception, and I forthwith instructed them to pay over to Lake the \$2,971.57 and to retain the residue, \$2,528.43, pending the investigation of the claim of Messrs. H. Fogg & Co. Before this money was received by Messrs. Adrian & Co., G. W. Lake went away from Nagasaki, leaving his brother, Edward Lake, in charge of his business.

Finally, McCaslin settled the matter, as far as he was concerned, with Messrs. H. Fogg & Co., in Shanghai, by an amicable compromise, and it then became narrowed down to a claim against Lake for about \$800, and this was eventually settled by Edward Lake paying to Drummond Hay (agent appointed by Messrs. H. Fogg & Co. to attend to this business) \$400. I had advised both parties to settle this matter amicably out of court, but at no time made mention of any sum that I considered fair to offer or receive. The proposal by Lake to pay \$500 was entirely voluntary on his part. Hay at first refused to accept this amount, and only after considerable delay and with much reluctance did finally assent to it. When Lake first told me that he had proposed to compromise by paying \$400, but that Hay had refused to accept the sum, he not only expressed his willingness to settle the matter in this way, but appeared anxious to have it done, and at no time did he ever express any objection, as far as I am aware, to paying this amount after his first proposal to do so.

Under such circumstances, the idea that Lake was compelled by me to "sacrifice \$400" is so glaringly preposterous that it could only have originated in the distempered imagination of such a creature as Edward Lake or his brother.

In the above-mentioned case of Messrs. Adrian & Co. *v.* G. W. Lake the assessors unanimously assented to the consul's decision, consequently the decision was final. (Vide section 10, act of Congress June 22, 1860, giving certain judicial powers to ministers, consuls, etc.) The law on this point was fully explained to Lake, and he well knew he was not entitled to an appeal.

The captain, E. Tolman, mentioned in the letter of G. W. Lake, and whose punishment by imprisonment and subsequent deportation has aroused so much indignation in his bosom, was one of the most violent and desperate of all foreign population of Nagasaki, and a man of whom the natives stood in great dread. He

had several times been arraigned before the consular court and punished, and on the occasion referred to the offense which Lake styles a "simple assault and battery" was the beating an inoffensive Japanese boatman in the most brutal manner, bruising and injuring him to such an extent that he was unable to walk about for several days. When Tolman was arrested for this offense he threatened to shoot the marshal, and at the trial carried into the court room, concealed upon his person, a loaded revolver, which was taken from him and found to contain five ball cartridges. This man Tolman and the Lakes were intimate friends and companions, and among such characters here the Lakes appeared to find their most congenial associates, all of them "birds of the same feather," men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties, and never hesitating to pervert the truth to suit their purposes.

G. W. Lake, by his lawlessness, forfeited several years ago his right to reside in Japan (vide treaty, Article VII, section 8), and only by sufferance did he remain here. The forbearance that has been extended to him in not having the law enforced and allowing him to remain in the country in consideration of his youth, with the hope that more age and experience would teach him to correct his evil propensities, he has proved himself unworthy of and utterly incapable of appreciating. If strict justice had been dispensed to him he would have been deported long ago. The consciousness of this fact, with perhaps an uneasy feeling that if he should return to Japan he might not be allowed to continue in the country, may have something to do with his extreme anxiety about my remaining at Nagasaki.

I quote from the court records of this consulate the following offenses for which he has received judicial punishment, to wit: June 16, 1863, charge of assault and battery on the person of one Levi N. Burdick, fined \$25, with costs; August 31, 1865, charge of assault with a dangerous weapon on Japanese, complaint lodged by the native authorities (as this case was especially of a heinous character, I inclose the finding of the court in full, marked "Inclosure No. 1," September 28, 1866); charge against both G. W. Lake and Edward Lake of assault and battery on one John Brown, consisted but under extenuating circumstances, and fined \$1 each, with costs; July 10, 1867, charge of unlawfully detaining and wounding a Japanese officer: sentenced to a fine of \$25, and imprisonment for ten days, and again warned that he had forfeited his right to reside in the country. On the way to jail, under this sentence, he escaped from the marshal by drawing a pistol and threatening to shoot him: was concealed some days in the vicinity of Nagasaki by his friend, the aforesaid Capt. E. Tolman, and then smuggled by him on board a steamer bound for Yokohama. He stayed awhile at Yokohama, thence proceeded to China, and after skulking about for several weeks, returned to Nagasaki, was rearrested, and imprisoned for his allotted term. He was also implicated in smuggling at an unopened port in the spring of 1867 on the ship *Annie Kimball*, of which he was the charterer. The case was heard June 5, 1867, and the ship fined \$1,000. (Vide Treaty Regulations, under which American trade is to be conducted in Japan; regulation 2, section 5.)

G. W. Lake was registered at this consulate September 12, 1860, and Edward Lake September 10, 1863. They were both boys at the time of their arrival. Their occupation has been that of butchers, compradores, and general traders. The latter still resides here, and the former up to the summer of last year (1869), when he left for Yokohama, and thence proceeded to the United States, where he arrived, I suppose, some time in the autumn. So he must have been absent from Topsfield nearly ten years, living all that time, with the exception of the few months spent on the voyages from and back again to America, in a foreign land some 12,000 miles away.

I beg to place these facts, together with the court record, by the side of the letter of the "selectmen" of Topsfield, who so confidently vouch for the good character of G. W. Lake, they "having known him from his earliest days."

I have, etc.,

WILLIE P.

UNITED STATES CONSULAR COURT,  
Nagasaki, August 31, 1865.

UNITED STATES	}	Charge of assault with a dangerous weapon.
v.		
GEORGE W. LAKE.		

\* \* \* \* \*

## FINDING OF THE COURT.

The court finds the prisoner guilty of the offense with which he had been charged, pointing out to him that in kicking an old man while sitting down, and without a word being said on either side, he had committed a cowardly, brutal act, and that having first gone to his room before going to the Japanese house and loading a revolver and taking it with him he showed that he was prepared to commit a very serious crime if there had been an opportunity for it.

He was then placed in the custody of the marshal, until such time as he should be called up again for sentence. The court then adjourned.

The governor of Nagasaki was informed of the result of the trial. (See letter No. 83, letter book, folio 178.) September 11, 1865. Court met at 11 a. m., the marshal having been ordered to bring the prisoner into court at that time for sentence.

The prisoner was told that, in the opinion of the court, he richly deserved imprisonment, but that in consideration of there being no other jail in the port than the Japanese jail, where he could be placed, and the court being very reluctant to confine him there at this season of the year, a heavy fine would be inflicted instead. He was further told that it had been very difficult to satisfy the Japanese authorities with this mode of punishment, the governor having been very urgent that some punishment should be given, which the victims of his brutality could see and appreciate. Prisoner was then warned against a repetition of the offense he had committed, and reminded that this being his second conviction of misdemeanor, he had, under the fifth (5) clause of the seventh article of the treaty of Yedo, lost his right of permanent residence in Japan, and could be required by the Japanese authorities to leave the country. He was then sentenced to pay a fine of \$300 and to pay the cost of court; to stand committed until paid.

JOHN G. WALSH,  
*United States Consul.*

Approved.

W. M. ROBINET, *Assessor.*

CONSULATE OF THE UNITED STATES,  
*Nagasaki, July 7, 1870.*

The above is a true extract from the consular court record.

[L. S.]

WILLIE P. MANGUM,  
*United States Consul.*

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*Mr. De Long to Mr. Fish.*

No. 197.]

UNITED STATES LEGATION,  
*Yokohama, Japan, June 6, 1871.*

SIR: I have the honor to advise you that on the 26th of April last one George Wilkins Lake, as plaintiff, filed in my court his petition at law against Mr. Willie P. Mangum, United States consul at Nagasaki, as defendant. (Inclosure No. 1.) This petition, as you will observe, charges the defendant with having abused his powers as consul, whereby he, the plaintiff, was caused to suffer loss and damage in the sum of \$1,500, for which sum judgment is prayed for by the plaintiff.

The petition being duly verified, and costs of court having been paid by plaintiff, I issued a summons, directed to defendant, requiring him to appear and answer said petition within twenty days after service of the same upon him. (Inclosure No. 2.) This summons having been duly served and returned, the defendant, on the 23d of May, appeared in said action by filing in court a demur to the complaint of plaintiff. (Inclosure No. 3.)

Also, on the 26th of April last, the said George Wilkins Lake, as plaintiff, filed in my court another petition at law against Willie P. Mangum and L. M. Dent, defendants, charging them with the offense of false imprisonment, and demanding a judgment for damages in the sum of \$5,000. (Inclosure No. 4.) In this action I also issued a summons, as in the last case mentioned, which, having been regularly served, the defendant Dent, on the 20th of May last, answered by demurring thereto. (Inclosure No. 5.)

On the 23d of May the defendant Mangum also appeared, and joined issue in said action by demurring to the petition of plaintiff. (Inclosure No. 6.)

On the 23d of May last the said George Wilkins Lake filed in my court another petition at law against said Willie P. Mangum, charging him with having uttered

and published certain libelous statements affecting him, and asking a judgment in damages against the said defendant for the sum of \$25,000. (Inclosure No. 7.)

Mr. Mangum, being present at this legation when this last petition was filed, waived the issuance and service of summons in said action, and appeared by filing a demur to plaintiff's petition. (Inclosure No. 8.)

Inasmuch as in all of these actions the question of the jurisdiction of this court was raised, the same as it was in the action of Einstine Bros. et al. v. Lemuel Lyon and others, reported to you by me in dispatches No. 30 of the 21st of March, 1870, and No. 52 of the 20th of May following; and inasmuch as I had never been advised by you that my action in that case was approved, I determined, before proceeding further with any of these actions, to communicate all of these proceedings to you, and ask for instructions.

I should not have entertained any doubts relative to my line of duty but for your silence with regard to the Einstine case, which was followed by the receipt by me from you of the new consular regulations, which provide, in paragraph 433, page 100, as follows: "The power of commencing civil and criminal proceedings is vested in consular officers exclusively."

As this paragraph might have been intended as a reply to the Einstine dispatches, I regarded it as being prudent at least to advise with you before proceeding, especially as the good of the service here requires that I should not exercise any doubtful powers over our consular officers, who are subject to be frequently harassed by similar actions to these; and who feel that it is not within the proviso of the law that they should be subject, as consuls, to any superior officer directly but yourself, and who also claim that their power for good with the Japanese officials will be materially affected if they may be constantly sued and brought into my court by persons who, from time to time, they have to punish to enforce obedience to our laws and treaty obligations with Japan.

Having resolved to pursue this course, I addressed a letter to Mr. Hill, plaintiff's attorney, advising him of my determination. (Inclosure No. 9.)

On the following day I received a note from Mr. Hill, entirely and cordially approving of my determination to report these causes to you before trying them. (Inclosure No. 10.)

On the same day I replied to Mr. Hill, thanking him for his concurrence. (Inclosure No. 11.)

On the 28th of May following I received, somewhat to my surprise, a note from Mr. Hill, demanding, on behalf of Mr. Lake, an immediate trial of all these causes. (Inclosure No. 12.) To which note I replied on the same day, reviewing the reasons assigned by him, and refusing to comply with his demand. (Inclosure No. 13.)

This correspondence I have reported to you to place you in possession of all the facts in connection with this case, should Mr. Lake make a complaint to you against me, as I have been informed that he declared he would do.

If it should be your opinion that it is my duty to try these causes and not dismiss them, I should feel deeply obliged to you if you would go further, and give me your views with regard to the questions of law raised by the demurs, as some of them are difficult to determine without access to a law library.

If there is any authority you could refer me to, in passing upon the demur to the libel action, I would thank you for it, as I have no books treating upon the subject of libel.

I have, etc.,

C. E. DE LONG.

[Inclosures.]

No. 1. Petition of G. W. Lake.

No. 2. Summons.

No. 3. Demur of Defendant Mangum.

No. 4. Petition of Lake in case of Lake v. Mangum and Dent.

No. 5. Demur of Defendant Dent.

No. 6. Demur of Defendant Mangum.

No. 7. Petition of Defendant Lake in libel suit.

No. 8. Demur of Defendant Mangum.

No. 9. Note of C. E. De Long to G. W. Hill.

No. 10. Reply of Mr. Hill indorsing my views.

No. 11. Reply of De Long to Hill.

No. 12. Demand of Mr. Hill for immediate trial.

No. 13. Reply of De Long refusing this.

[Inclosure No. 1.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, April, 1871.

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }  
v. } Petition.  
WILLIE P. MANGUM, DEFENDANT. }

The plaintiff, George Wilkins Lake, respectfully shows to this honorable court as follows:

First. That the defendant was at the time of the injuries hereinafter complained of, and now is, the United States consul for the port of Nagasaki, in the Empire of Japan.

Second. That on the 7th day of April, 1869, the said plaintiff and R. S. McCaslin, of said Nagasaki, made an agreement together to submit certain differences then existing between them respecting a certain flour mill to the arbitration of J. W. Smith and Johannas Brunier, giving to the said arbitrators power to select an umpire, and further agreeing to submit to the award of said arbitrators and umpire in the said premises, and that John Maltby was selected as such umpire by the said arbitrators.

Third. That while the said differences were pending before the said arbitrators and the said umpire, and before any award had been made under the said agreement of submission to arbitration as aforesaid, to wit, on the 15th day of April, 1869, the defendant, willfully and maliciously intending to injure the plaintiff, and by virtue of his authority as United States consul as aforesaid, interfered to prevent an award being rendered by said arbitrators and said umpire, and wrongfully and illegally issued and directed an order from the United States consulate at said Nagasaki to the said umpire, John Maltby, directing the said umpire to withhold giving an award under the said submission to arbitration, whereby the said arbitrators and said umpire were for a long period prevented from giving such award, and whereby the plaintiff was for a long time prevented from having his claim in said premises decided and from receiving the amount of money to which he was entitled therein; and whereby the plaintiff was subjected to an action for damages against him in the consular court of the United States, at said Nagasaki, and was put to great loss, expense, trouble, and inconvenience, and otherwise subjected to great injury, to his damage \$1,500.

Therefore the plaintiff prays this honorable court for judgment against the said defendant for the sum of \$1,500, and for the costs of this action, with such other and further relief as may be just in the premises.

G. W. HILL,  
*Counsel and Attorney for Plaintiff.*

EMPIRE OF JAPAN, Yokohama, ss:

G. W. Hill, being first duly sworn, on oath says that he is the duly-authorized attorney of the plaintiff in the foregoing-entitled action: that he has read the foregoing petition, and knows the contents thereof; and that, as he is informed and verily believes, the said petition is true: and that the reason that this petition is verified by this affidavit is that the plaintiff named in said petition is now absent from Yokohama.

G. W. HILL.

Subscribed and sworn to before me at Yokohama this 26th day of April, 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States in Japan.*

[Inclosure No. 2.]

UNITED STATES LEGATION,  
Yokohama, Japan, April 26, 1871.

To CHARLES L. FISHER,  
*United States Marshal for Japan, at Nagasaki:*

You are hereby commanded and directed forthwith, after the receipt by you of the annexed copy of petition and summons in the action entitled George Wilkins

Lake v. Willie P. Mangum, to make due service of the same upon the said defendant by delivering to him personally a true copy thereof, and return the same to this court within twenty days from the date of its receipt by you, with your proceedings thereunder indorsed in writing hereon.

Hereof fail not.

Given under my hand and the seal of this court this the 26th day of April, A. D. 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *April, 1871.*

GEORGE WILKINS LAKE, PLAINTIFF, }  
v. } Summons.  
WILLIE P. MANGUM, DEFENDANT. }

The people of the United States to Willie P. Mangum, defendant:

You are hereby required to appear in an action brought against you, by the above-named plaintiff, in the ministerial court of the United States for Japan, and to answer the petition filed therein, within twenty days (exclusive of the day of service) after the service on you of this summons, or judgment by default will be taken against you, according to the prayer of said petitioner.

The said action is brought to recover the sum of \$1,500, the plaintiff's damages alleged by him to have been suffered by him by reason of the wrongful act of the said defendant, in staying a certain arbitration, pending between the plaintiff and one R. J. McCaslin, about May, 1869, and more particularly set forth in the said petition, a copy of which is hereto annexed, and for costs of action. And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the said sum of \$1,500 and costs as aforesaid.

Given under my hand and seal of the ministerial court of the United States for Japan, at Yokohama, Japan, this 26th day of April, A. D. 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

[Inclosure No. 3.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *May 23, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States for Japan

GEORGE WILKINS LAKE, PLAINTIFF, }  
v. }  
WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

First. To the jurisdiction of the court as having no original civil jurisdiction.

Second. That the petition fails to state any cause of action, because it charges no matters that is not error of judicial judgment, if there be error at all, for which no action lies.

Third. That a full explanation of his official action in this matter has been rendered to the Department of State and accepted as satisfactory.

Therefore the defendant prays the honorably court that this action be dismissed.

WILLIE P. MANGUM, *Defendant.*

YOKOHAMA, *May 23, 1871.*

I hereby certify that the within demurrer was this day served upon plaintiff, G. W. Lake, by delivering to his attorney, G. W. Hill, a true copy thereof and showing to him the original.

May 24, 1871.

H. W. DUNSON, *United States Marshal.*

[Inclosure No. 4.]

In the ministerial court of the United States for Japan.

YOKOHAMA, *April, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF,  
v.  
WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS. } Petition.

The plaintiff, George Wilkins Lake, respectfully shows this honorable court as follows:

First. That the said defendant Willie P. Mangum was at the time of the injuries hereinafter complained of, and now is, United States consul at the port of Nagasaki, in the Empire of Japan, and that the said defendant L. M. Dent at the time of said injuries was acting United States marshal at said port of Nagasaki, and that each of said defendants are citizens of the United States.

Second. That on the 13th day of April, 1869, at the said port of Nagasaki, in the Empire of Japan, the defendant W. P. Mangum, willfully and maliciously conspiring and intending to injure the plaintiff, wrongfully, maliciously, and illegally, and without any right or authority so to do, and against the will of the plaintiff, ordered, directed, and authorized the said defendant L. M. Dent to arrest and imprison the plaintiff, and that on said day, and at said place, the said defendant L. M. Dent, acting under such order and by the authority of said defendant W. P. Mangum, given as aforesaid, wrongfully, illegally, and by force compelled the plaintiff to go with him to the jail there situated, and there imprisoned the plaintiff, and there detained him and restrained him of his liberty for the space of twenty-four hours, whereby the plaintiff was put to great pain, trouble, disgrace, and inconvenience, and was prevented from attending to his necessary affairs and business during that time, and was compelled to expend the sum of \$65.50 in costs of obtaining his discharge, to his damage of \$2,500.

Third. That on the 14th day of May, 1869, the said defendant W. P. Mangum, willfully and maliciously, intending further to injure the plaintiff, and without any right or authority so to do, and against the will of the plaintiff, again ordered, directed, and authorized the said defendant L. M. Dent to arrest and imprison the plaintiff, and that on said day, and at said place, the said defendant L. M. Dent, acting by and under the order and authority of said defendant W. P. Mangum, given as aforesaid, wrongfully, illegally, and by force, again compelled the plaintiff to go with him to the jail there situated, and there imprisoned the plaintiff, and there detained him and restrained him of his liberty for the further space of twenty-four hours, whereby the plaintiff was put to still further pain, trouble, and inconvenience, and was further prevented from attending to his necessary affairs and business during that time, and he was compelled to expend the further sum of \$68.50 in costs in obtaining his discharge, to his further damage \$2,500.

Therefore, the plaintiff prays judgment from the court against the said defendants for the sum of \$5,000, his said damages, with the costs of this action, and for such other relief as may be just in the premises.

G. W. HILL,  
*Counsel and Attorney for Plaintiff.*

EMPIRE OF JAPAN, *Yokohama, ss:*

G. W. Hill, being first duly sworn, on oath says that he is the duly authorized attorney of the plaintiff in the foregoing-entitled action; that he has read the foregoing petition and knows the contents thereof, and that he is informed and verily believes the said petition is true; and that the reason that this petition is verified by this affidavit is that the plaintiff named in said petition is now absent from Yokohama.

G. W. HILL.

Subscribed and sworn to before me, at Yokohama, this 21st day of April, 1871.

C. E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America in Japan.*

[Inclosure No. 5.]

In the ministerial court of the United States for Japan.

YOKOHAMA, May 20, 1871.

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }  
   v.        } Petition.  
 WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS. }

Now comes the defendant L. M. Dent and demurs, inasmuch that the law provides that original jurisdiction rests with consuls, and the defendant herein named, not being at any time consul, places the above action out of the jurisdiction of the ministerial court.

L. M. DENT.

[Inclosure No. 6.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, May 23, 1871.

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }  
   v.        }  
 WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

First. To the jurisdiction of the court as having no original civil jurisdiction.

Second. That the petition fails to state any cause of action, because it charges no matter that is not error of judicial judgment, if there be error at all, for which no action lies.

Third. That a full explanation of his official action in this matter has been rendered to the Department of State and accepted as satisfactory.

Therefore the defendant prays the honorable court that this action be dismissed.

WILLIE P. MANGUM, *Defendant*.

I hereby certify that I have this day served the within demurrer on G. W. Lake, by delivering to his attorney, G. W. Hill, a true copy thereof and showing him the original.

Yokohama, Japan, May 24, 1871.

H. W. DUNSON,  
*United States Marshal.*

[Inclosure No. 7.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, May 20, 1871.

GEORGE WILKINS LAKE, PLAINTIFF, }  
   v.        } Petition.  
 WILLIE P. MANGUM, DEFENDANT. }

The above-named plaintiff, George Wilkins Lake, complaining of the defendant, Willie P. Mangum, respectfully shows the court as follows:

First. That the said defendant was at the time of the injuries hereinafter complained of, and now is, consul for the United States at the court of Nagasaki, in the empire of Japan; and is a citizen of the United States of America.

Second. That on the 7th day of July last past, the defendant falsely, willfully, and maliciously composed, wrote, and published, of and concerning the plaintiff, in a certain letter addressed to the Hon. H. Fish, Secretary of State of the United States of America, the false and defamatory words and matter following; that is to say, "These two letters of the brothers Lake" (meaning two letters written by

this plaintiff and Edward Lake, his brother, and forwarded to the said Hon. H. Fish, Secretary of State) "are most villainous perversions of the truth" (meaning thereby that the plaintiff had in his said letter deliberately and willfully lied for his, the plaintiff's, private benefit and purpose, and of, about, and concerning the defendant, and with intent to wrong and injure the defendant, and meaning that the plaintiff was a liar and a villain).

Third. And the plaintiff says that on the said day the defendant falsely, willfully, and maliciously composed, wrote, and published in his said letter of and concerning the plaintiff the further false and defamatory words and matter following, viz: "The defendant" (meaning the plaintiff) "contumaciously refused to comply with the judgment" (meaning the judgment of the consular court of the United States at Nagasaki, in Japan) "and obey the orders of the court" (meaning the said consular court, and meaning thereby that the plaintiff was a bad and lawless person, and had willfully set the law of the United States at defiance).

Fourth. And the plaintiff says that on said day, and in his said letter, the defendant further falsely and maliciously composed and published of and concerning the plaintiff the further false and defamatory words and matter following, viz: "Under such circumstances, the idea that Lake" (meaning Edward Lake aforesaid) "was compelled by me" (meaning the defendant) "to sacrifice \$400" (meaning that Edward Lake had in the letter written by him, and heretofore referred to, written and charged that he, the said Edward Lake, had been compelled by the defendant to sacrifice \$400) "is so glaringly preposterous that it could only have originated in the distempered imagination of such a creature as Edward Lake or his brother" (meaning the plaintiff, and meaning thereby that the plaintiff was unsound in mind and insane, and that he had wilfully invented a falsehood and had lied about the defendant; and meaning that the plaintiff was a person unfit to associate in good society or with men of honor, and that he was devoid of decency and respectability).

Fifth. And the plaintiff says that on said day, and in his said letter, the defendant further falsely and maliciously composed and published, of and concerning the plaintiff, the further false and defamatory words and matter following, that is to say: "This man Tolman and the Lakes" (meaning the plaintiff and Edward Lake) "were intimate friends and companions; and among such characters have the Lakes" (meaning the plaintiff and Edward Lake) "appeared to find their most congenial associates: all of them" (meaning the plaintiff and all of his associates) "birds of the same feather, men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties, and never hesitating to pervert the truth to suit their purposes" (meaning thereby that the plaintiff was a thoroughly bad, disreputable, dangerous, and dishonorable person, and one who should be avoided and shunned by everyone; and that he, the plaintiff, was utterly devoid of honor or respectability, and that he was an habitual liar and lawbreaker).

Sixth. And the plaintiff says that on said day and in said letter the defendant further falsely and maliciously composed and published, of and concerning the plaintiff, the further false and defamatory words and matter following, to wit: "G. W. Lake" (meaning the plaintiff) "by his lawlessness forfeited several years ago his right to reside in Japan (vide treaty, Article VII, section 8), and only by sufferance did he remain here" (meaning that the plaintiff was without the pale or protection of the law of the United States, and had in Japan no legal rights which any person was bound to respect). "The forbearance that has been exhibited to him" (meaning the plaintiff) "in not having the law enforced, and allowing him" (the plaintiff) "to remain in the country" (meaning the forbearance of the defendant; and that the plaintiff had been permitted by the defendant as a favor to remain in Japan) "in consideration of his" (the plaintiff's) "youth, with the hope that more age and experience would teach him" (the plaintiff) "to correct his evil propensities, he has proved himself utterly incapable of appreciating. If that justice had been dispensed to him, he" (the plaintiff) "would have been deported long ago" (meaning thereby that the character and pursuit of the plaintiff were wholly evil, scandalous, and lawless, and that the plaintiff was wholly incapable and deficient of moral understanding or ability to appreciate friendship or kindly feeling; and that he was utterly unworthy of being assisted or befriended, or of the respect of good and worthy citizens and subjects residing in Japan).

Seventh. And the plaintiff says on said day and in said letter the defendant further falsely and maliciously composed and published, of and concerning the plaintiff, the further false and defamatory words and matter following, to wit: "He" (meaning the plaintiff) "was also implicated in smuggling in an unopened port in the spring of 1867" (meaning thereby that the plaintiff was an outlaw and a criminal, and had violated the laws of the United States against smuggling).

Eighth. And the plaintiff says that by means of the publication of the words and matter as aforesaid he was injured in his reputation to his damage \$25,000.

Therefore the plaintiff prays judgment against the defendant for the said sum of \$25,000, and for costs of this action, with such other and further relief as may be just.

G. W. HILL,  
*Plaintiff's Counsel and Attorney.*

EMPIRE OF JAPAN, *Yokohama*:

George Wilkins Lake, being first duly sworn, on oath says that he is the person named as plaintiff in the foregoing petition: that he has read the said petition and knows the contents thereof; and that the same is true of his own knowledge, except as to those things therein stated on information and belief, and that as to those things he believes it to be true.

G. W. LAKE.

Subscribed and sworn to before me, at Yokohama, this 23d day of May, 1871.

C. O. SHEPARD,  
*United States Consul at Yeddo, Acting for Kanagawa.*

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[Inclosure No. 8.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *May 24, 1871.*

Before his excellency, Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }

v.

WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

First. To the jurisdiction of the court as having no original civil jurisdiction.

Second. That the petition fails to state any cause of action, because it charges no matter but that contained in an official dispatch explanatory of defendant's official action regarding the plaintiff that was forwarded to the State Department, and accepted as satisfactory, which, being an official report made in the line of official duty to an official superior, can under no circumstances be considered as libelous, and no action at law can lie therefor.

Therefore the defendant prays this honorable court that this action be dismissed.

WILLIE P. MANGUM, *Defendant.*

I hereby certify that I have this day served the within demurrer on G. W. Lake by delivering to his attorney, G. W. Hill, a true copy thereof and showing the original.

Yokohama, May 24, 1871.

H. W. DUNSON, *United States Marshal.*

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[Inclosure No. 9.]

YOKOHAMA, *May 23, 1871.*

MY DEAR SIR: Having just returned from a walk, I received your cover containing a petition in duplicate of an action entitled *Lake v. Mangum*, for \$25,000 damages. Also your letter asking me to file it, and inclosing \$25.

In the two cases previously commenced Mr. Mangum has filed demurs and sent to the marshal for service on you.

We can not understand why the marshal has failed to give you both copies.

In this last action that you have just commenced Mr. Mangum says that he will also appear and file a demur or answer within a few days, waiting summons, thus saving time and costs.

I have concluded that the proper course for me to pursue is to take the advice of the Secretary of State in all these actions upon the jurisdictional questions at issue before I hear or try them.

Never having been approved in the Sherman-Einstine case, the clause in the new regulations averring that all original jurisdiction is vested in consuls, and the further consideration that if I should be wrong in entertaining these suits it would cause great loss and expense for nothing, which would fall upon your client,

causes me to pursue this course, which will cause a delay of but a few months, and then no doubt will remain upon my mind as to the course it is my duty to pursue.

I trust this course will prove satisfactory to Mr. Lake and yourself.

Yours, respectfully,

C. E. DE LONG.

G. W. HILL, Esq.

P. S.—I return you the sum of \$10 inclosed.

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[Inclosure No. 10.]

YOKOHAMA, JAPAN, *May 24, 1871.*

DEAR SIR: Your note of to-day in the matter of Mr. Lake's several actions is at hand.

I quite approve of the course you have indicated as that you will take in the matter as to procuring advices from the State Department. It is certainly a very grave and important matter to us, and one in which it is very desirable to proceed without error.

I have myself no doubt as to the ministerial court being the proper tribunal for its adjudication, and that the regulations of the State Department, on which the defendants rely in their demurrer, can not be held to annul the act of Congress of June 22, 1860. Yet, as there is room for a question, your course is certainly a wise one.

The necessary delay which it will necessitate is very hard on the plaintiff, whose enforced absence from Nagasaki subjects him to continued loss and damage, but I don't know what suggestion to make in the premises that will relieve him.

Do I then understand that you will not decide on the question of jurisdiction until you can hear from the Department? for, I judge, of course Mr. Mangum will take a like course as to the last instituted action.

I am, sir, very respectfully, yours, etc.,

G. W. HILL.

C. E. DE LONG,

*Envoy, etc., Plen'y, etc.*

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[Inclosure No. 11.]

*Mr. De Long to Mr. Hill.*

YOKOHAMA, *May 24, 1871.*

MY DEAR SIR: Your favor of this morning is at hand. I am much pleased to know that you agree with me in relation to the course I propose to pursue in the cases against Mr. Mangum.

The delay and inconvenience is to be much regretted: but at least it can be better borne by us all than the constant feeling of uncertainty and doubt that would weigh upon our minds if we tried these actions without asking for these advices.

I shall pursue the same course with all three of the cases.

Yours, etc.,

C. E. DE LONG.

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[Inclosure No. 12.]

*Mr. Hill to Mr. De Long.*

YOKOHAMA, JAPAN, *May 28, 1871.*

In re G. W. Lake v. W. P. Mangum et al.

DEAR SIR: I am in receipt of your communication of the 23d instant, informing me that you have concluded that in the several actions pending in the United States ministerial court, in which G. W. Lake is plaintiff, your proper course will be to take the advice of the Secretary of State upon the jurisdictional question at issue before you hear or try them.

I yesterday informed you that to myself, also, this seemed advisable, but I am now instructed by my client, Mr. Lake, to ask for a hearing on the demurrers filed in the several actions at as early a day as possible, and I desire to present to you his view of the case.

Mr. Lake thoroughly appreciates your suggestion that the questions involved are very important ones, as well as the interests involved large, and that it is very desirable to conduct these proceedings without error, and he quite coincides in all that can be said on these points; but at the same time the delay which will be necessary, occasioned by awaiting advices from Washington, will be to him a very great hardship, as for various reasons he can not return permanently to Nagasaki, where lie all his interests, until the adjudication of these actions. He would be thus subjected to great and continued expenses and loss of both time and money by the postponement.

It is believed that as a matter of right the plaintiff is entitled to a hearing on the questions of law involved and a decision thereon without delay.

It is perfectly understood on our part how uncertain are the provisions of law to which you can look from your Government in the consideration of these questions, and we appreciate the difficulty in which you are placed under the inadequate system of our practice and with no more definite regulations or guide at your disposal than in fact exists; but as it is in a judicial capacity, and that only, that an appeal is made to you for relief, and viewing the question as one simply of legal practice, is the plaintiff not entitled to a decision from your court upon such lights and authorities as you may possess? This is our view.

The plaintiff appeals to a judicial tribunal, the ministerial court of the United States. That court has taken cognizance of his actions, which are now pending before it, and in the conduct of these actions the plaintiff can only be guided by the usual and commonly approved legal practice. It is not believed that the State Department at Washington can entertain an appeal or review of the action of this court, or can in any case whatever exercise judicial functions; but even were that so, would there be any good reason for the inferior court in which a question is pending to delay its adjudication until advices could be had from the superior tribunal?

The vital importance of these questions to the plaintiff, Mr. Lake, will, I trust, excuse the length and earnestness his own is urged.

I inclose herewith on behalf of Mr. Lake a præcipe for the hearing of the demurrer filed in the action *G. W. Lake, plaintiff, v. Willie P. Mangum, defendant*.

I am, etc.,

G. W. HILL.

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[Inclosure No. 13.]

*Mr. De Long to Mr. Hill.*

YOKOHAMA, JAPAN, May 26, 1871.

MY DEAR SIR: I have received your letter of this day's date requesting an immediate trial of the demurrer in the case of *Lake v. Mangum and Dent*, and which demand is made, as you state, at the instance of your client.

I have only to say in reply that while I regret that the course I have seen proper to adopt may cause your client some inconvenience or delay, I shall, however, adhere to my determination of conferring with my superior officer before I hear this or either of these causes, confident that this course is a proper one to secure justice and avoid errors. I can not see, however, how my not hearing these cases at present can in any way prevent your client from proceeding to Nagasaki and conducting any business there or elsewhere as he might do if the causes were tried.

There is nothing in these cases the determination of which one way or the other would affect his personal liberty or his pursuit of his ordinary business.

I am confident that he will agree with me, as well as yourself, when you reflect, that if it is proper for me to advise with the honorable Secretary of State at all, that it is my duty to do so before I hear these causes and not afterwards. To do so subsequently would be very absurd.

Yours, etc.,

C. E. DE LONG.

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*Mr. Davis to Mr. De Long.*

No. 97.]

DEPARTMENT OF STATE,  
Washington, August 19, 1871.

SIR: I have to acknowledge the receipt of your dispatch No. 197, of June 6, 1871, with inclosures, relating to two suits commenced before you by Mr. G. W. Lake against Consul Mangum, and a third against Mr. Mangum and Mr. Dent, marshal of the consular court.

It does not seem to me proper that I should instruct you upon a point now presented for your judicial determination in actions between private suitors.

I however inclose you copies of memoranda in relation to the questions raised by the pleadings, in those which were prepared by the law officer of this Department.

You will attach to his suggestions such weight as you may think them to deserve, and avail yourself of such assistance as they may furnish, as I am obliged to do when requiring his services, without being relieved of the responsibility of personal judgment.

I am, etc.,

J. C. B. DAVIS.

*Mr. Shepard to Mr. Fish.*

No. 6.]

UNITED STATES LEGATION,  
Kanagawa, Japan, October 21, 1871.

SIR: Inclosed I have the honor to hand you an order issued by me, which so fully explains itself that I shall add but little.

With the matter in dispute between Mr. Lake and Consul Mangum the Department is entirely conversant, and as from an opinion of the law officer of the State Department I had reason to believe a speedy trial would be reached: and as to my mind it would be quite against the spirit and principles of our Government to deprive a citizen of his right of appeal: and as whatever action was taken must be immediate, before I could communicate with Mr. De Long I issued the order, which may be less regular and legal than equitable. As "chargé d'affaires" I hardly know how I stand, but feeling in my action only a desire to do justly, I hope for your approval.

If this action be an error, I trust it will be found upon the side of right and mercy.

I have, etc.,

CHARLES O. SHEPARD.

*Mr. Shepard to Mr. Mangum.*

No. 83.]

UNITED STATES LEGATION,  
Yokohama, Japan, September 26, 1871.

SIR: Whereas it appears to me by the affidavit of George W. Hill, attorney for G. W. Lake, an American citizen, that an order and notice has been issued by yourself at Nagasaki to the effect that said G. W. Lake has lost his right of permanent residence in Japan, and is required to leave the country on or before the 7th day of October proximo: and whereas it further appears that the said G. W. Lake has several actions pending in the ministerial court of the United States in Japan in which he is the plaintiff: and whereas it further appears that said actions could not heretofore be brought to trial owing to delays not the fault of the said Lake: and whereas it further appears that the personal presence of said Lake is necessary to said actions: and whereas the said plaintiff represents that said actions can be brought to a speedy trial: and whereas the said plaintiff prays that the foregoing described order and notice be provisionally suspended, and the time he is permitted to stay in this Empire extended a sufficient length of time to allow of his prosecuting said actions:

Now, therefore, because of said affidavit and its showings, and because of certain documents received from the Department of State bearing upon this case, it is directed that the order heretofore mentioned, issued by yourself, be, and it hereby is, stayed in its effect and execution until further orders from this legation.

Of which please take notice and govern yourself accordingly.

I am, etc.,

C. O. SHEPARD.

(A copy of the above order was issued to all United States consuls in Japan.)

*Mr. Fish to Mr. Butler.*DEPARTMENT OF STATE,  
*Washington, January 10, 1871.*

SIR: I have the honor to acknowledge the receipt of your reference to this Department, under date of September 20 last, of the communication of the 17th of the same month from Mr. G. W. Lake, requesting copies of certain records of the consular court at Nagasaki, Japan, supposed to be in this Department.

In reply I have to inform you that the records adverted to are not in this Department, nor are copies of them, or any part of them. They would appear, from the statement of the consul, a copy of which was communicated to you on September 3 last, and by you to Mr. Lake, to show repeated convictions of the latter for assaults and batteries. It is not perceived how they can be in any way material for the consideration of Mr. Lake's complaint against the consul of injustice done in a civil suit decided by the consul with the aid of assessors. The tenth section of the act of June 22, 1860, makes such decisions final. If injustice has been done to Mr. Lake, this Department is not aware of any mode in which it can be remedied.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. B. F. BUTLER,  
*House of Representatives.*

*Mr. Davis to Mr. Mangum.*

No. 43.]

DEPARTMENT OF STATE,  
*Washington, May 20, 1870.*

SIR: I transmit herewith copies of papers submitted for the consideration of this Department by Hon. Benj. F. Butler, wherein one G. W. Lake claims that you have done him injustice in the settlement of claim by causing him to sacrifice \$400, which it is stated was awarded to him by arbitration.

I will thank you to give such explanation of the affair as in your judgment may seem necessary.

I am, sir, your obedient servant,

J. C. B. DAVIS, *Acting Secretary.*

WILLIE P. MANGUM, Esq.,  
*United States Consul, Nagasaki.*

*Mr. Davis to Mr. Lake.*DEPARTMENT OF STATE,  
*Washington, April 25, 1870.*

SIR: In reply to your letter, without date, received on the 22d instant, I have to inform you that consuls are not exempt from prosecution because of their official position, but may be proceeded against like other persons when within reach of judicial powers.

The Department is not informed of the present address of Mr. Moore.

I am, sir, your obedient servant,

J. C. B. DAVIS, *Assistant Secretary.*

GEO. W. LAKE, Esq.,  
*Topsfield, Mass.*

*Mr. Fish to Mr. De Long.*

No. 124.]

DEPARTMENT OF STATE,  
*Washington, December 19, 1871.*

SIR: I have to acknowledge the receipt of Mr. Shepard's dispatch of the 21st of October last, No. 6, in regard to the case of Mr. G. W. Lake, and in reply to state that as the Japanese authorities have requested that he be sent out of the country as soon as the complaint of one Laka against him has been investigated and justice done, in accordance with the seventh article of the treaty between

Japan and the United States, their request, unless modified, must be complied with: but as by the terms of the same article the time at which he must leave may be extended, not to exceed one year, to be calculated from the time he shall be free to attend to his affairs; and as it has not yet been shown to me that the complaint of one Laka has been investigated and justice done, and further, as it appears that the said Laka has not settled his other affairs in Japan, I approve of the order made by Mr. Shepard, dated Yokohama, September 25, 1871, staying, until further orders from you, the previous order made by W. P. Mangum, esq., the United States consul at Nagasaki, to the effect that the aforesaid G. W. Lake must leave Japan on or before the 1st day of October last.

I am, etc.,

HAMILTON FISH,

No. 260.]

UNITED STATES LEGATION, JAPAN,  
*December 21, 1871.*

SIR: I have the honor to report to you that following, as nearly as I could, the line of your instructions contained in your No. 97, of the 19th of August, A. D. 1871, and the opinion of Mr. E. Peshine Smith, accompanying it, I have tried and decided the two actions at law commenced by George Wilkins Lake, as plaintiff, against Willie P. Mangum, as defendant, and the one commenced by the same plaintiff against Willie P. Mangum and L. M. Dent.

Inclosures Nos. 1 to 29, inclusive, are copies of the documentary evidence adduced during the three trials: inclosure No. 30 is copy of the parol testimony; and No. 31 is a copy of the judgments awarded in the three causes, with newspaper copy also inclosed.

Trusting that you will pardon the roughness of this dispatch, as I am terribly hurried by my preparations for departure.

I have the honor to remain, sir, your most obedient servant,

C. E. DE LONG,

Hon. HAMILTON FISH,  
*Secretary of State, Washington, D. C.*

P. S.—Notice of appeal to the United States district court in California has just been received and filed in case No. 2 (inclosure 33).

[List of inclosures.]

- No. 1.—Arbitration agreement.
- No. 2.—Complaint of Messrs. Adrian & Co., in their action against Lake.
- No. 3.—Letter of W. P. Mangum to Mr. Twombly, of Fogg & Co.
- No. 4.—Order of Mangum to the mission to suspend making an award.
- No. 5.—Adrian & Co. to G. W. Lake, agreeing to hold proceeds of sale of mill subject to the decision of the arbitrators.
- No. 6.—Order of Mangum to Lake, directing him to not sell or remove the mill.
- No. 7.—Arbitrator's award.
- No. 8.—Claim filed by Fogg & Co.
- No. 9.—Judgment in case of Adrian & Co. v. Lake.
- No. 10.—Letter from McCaslin to Lake, advising him of the sale of the mill.
- No. 11.—Letter of Mangum to Lake, directing him to allow the delivery of the mill to go on.
- No. 12.—Letter of Lake to McCaslin, admitting validity of the Fogg claim.
- No. 13.—Original partnership contract between McCaslin and Lake.
- No. 14.—Account filed by G. W. Lake.
- No. 15.—Lake's request to have the mill attached.
- No. 16.—Answer of Lake in the Adrian case.
- No. 17.—Order of Mangum to Lake to file his answer in the Adrian case.
- No. 18.—Lake's letter in reply to the order.
- No. 19.—Commitment for contempt.
- No. 20.—Attachment for contempt.
- No. 21.—Copy of court docket in the contempt cases.
- No. 22.—Affidavit of Ferdinand Plate.
- No. 23.—Search warrant.
- No. 24.—Letter of Lake to Mangum.
- No. 25.—Receipts of L. M. Dent.
- No. 26.—Receipts of L. M. Dent.
- No. 27.—Receipts of L. M. Dent.

- No. 28.—Dispatch of Mangum to the Assistant Secretary of State.  
 No. 29.—Letter of Assistant Secretary of State to Hon. B. F. Butler.  
 No. 30.—Copy of notes of parol evidence taken during the trial.  
 No. 31.—Printed copy of judgment of the ministerial court.  
 No. 32.—Newspaper copy of judgment of the ministerial court.  
 No. 33.—Notice of appeal.

[Inclosure No. 1.]

NAGASAKI, JAPAN, April 7, 1869.

G. W. LAKE }  
           v.        } In matter of dispute on account of flour mill.  
 R. J. McCASLIN }

We, the undersigned parties, do mutually agree to submit to the arbitration and decision thereof to Capt. J. U. Smith, on part of G. W. Lake, and Johannis Bruinier, esq., on the part of R. J. McCaslin, with power to said J. U. Smith and Johannis Bruinier to select an umpire; and we further agree to submit to the award of said arbitrators, or a majority of them, and consent that said award shall be final.

In testimony whereof we, the said George W. Lake and R. J. McCaslin, hereunto subscribe our names, day and date above given.

G. W. LAKE.  
 R. J. McCASLIN.

Signed in presence of—  
 WILLIE P. MANGUM,  
*United States Consul.*

[Inclosure No. 2.]

H. SCHIFF, REPRESENTING ADRIAN & Co., }  
           v.                                 } Action for damages.  
 GEORGE W. LAKE. }

To the United States consular court at Nagasaki:

The plaintiff, H. Schiff, representing Messrs. Adrian & Co., represents that the defendant, George W. Lake, a citizen of the United States, did, on the 17th of April, refuse to comply with his agreement to allow plaintiff to remove a flour mill situated on defendant's premises, thereby subjecting plaintiff to the damage of \$40 per day as lay-days of the brig *Magi*, employed to carry said mill from Nagasaki to Osaka, to be delivered to the parties to whom plaintiff had sold the said mill, and petitions the court to compel defendant to make good this damage up to the present time, to carry out in good faith his agreement, and render plaintiff what further compensation the court may deem just.

Nagasaki, April 26, 1869.

H. SCHIFF,  
*Representing Messrs. Adrian & Co.*

UNITED STATES CONSULAR COURT,  
*Nagasaki, April 26, 1869.*

Signed and sworn to before me.

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

UNITED STATES CONSULAR COURT,  
*Nagasaki, April 26, 1869.*

SIR: Notify Mr. Lake to appear at the United States consulate at Nagasaki on Friday next, the 30th instant, at 11 o'clock a. m., to present, under oath, his written answer to the foregoing petition, by serving him personally with an attested copy of the petition and of this order, making return of your service herein under oath.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

L. M. DENT,  
*United States Marshal.*

[Inclosure No. 3.]

CONSULATE OF THE UNITED STATES,  
*Nagasaki, April 18, 1869.*

SIR: Your letter of this date in the matter of the mill is duly received. I will direct the umpire to delay his award in the matter of arbitration until such time as he hears further from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,  
*United States Consul.*

J. F. TWOMBLEY, Esq.,  
*For H. Fogg & Co., Nagasaki.*

[Inclosure No. 4.]

UNITED STATES CONSULATE,  
*Nagasaki, April 15, 1869.*

SIR: The arbitrators in the case of G. W. Lake v. R. J. McCaslin, on account of flour mill, being unable to come to a satisfactory agreement, and having secured you as umpire to decide the case, I have to inform you that Messrs. H. Fogg & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,  
*United States Consul.*

JOHN MALTBY, Esq.

[Inclosure No. 5.]

NAGASAKI, *April 15, 1869.*

DEAR SIR: With regard to the sale of the flour mill which we sold to the Japanese, by order of Captain McCaslin, for a sum of \$5,500, less our commission of 5 per cent, we repeat to-day what we already told you verbally, that we shall keep this money till the arbitration between you and Captain McCaslin, now pending, is decided, and shall pay you, in accordance with the wishes of the United States consul, the amount decided upon by the arbitration, not exceeding the above-mentioned sum.

Your obedient servants,

ADRIAN & CO.

Messrs. G. W. LAKE & Co.—*Present.*

[Inclosure No. 6.]

UNITED STATES CONSULATE,  
*Nagasaki, November 21, 1868.*

SIR: I am informed by Mr. Forbes, representing the parties who own the mill located on your premises, that you have notified him that it is your intention to sell the mill on the 30th instant. You are hereby ordered to desist from selling or removing any part of said mill until the owners or parties concerned can be communicated with, and a proper understanding be arrived at in respect to the same.

Very respectfully, yours, etc.,

WILLIE P. MANGUM,  
*United States Consul.*

G. W. LAKE, Esq.

[Inclosure No. 7.]

I, the undersigned Johannis Bruinier, having, by desire of the parties concerned, consented to act as arbitrators between G. W. Lake and R. J. McCaslin respecting the sale and proceeds of a certain flour mill, now or lately in possession of G. W. Lake, and especially as regards G. W. Lake's claims against said mill, do now declare that, having carefully examined G. W. Lake's accounts against said mill, and also an agreement made between G. W. Lake and R. J. McCaslin, I find as follows:

Firstly. That, according to the said agreement, G. W. Lake becomes a partner with R. J. McCaslin in said mill, and consequently shares equally in the profit or loss of the same.

Secondly. As regards G. W. Lake's accounts rendered, I am of opinion that, as G. W. Lake is a partner with R. J. McCaslin in the mill, he is not entitled to charge either interest on the money he expended in erecting or running the mill, rent for the land and premises occupied by the mill, or commission on sales of flour, etc. G. W. Lake's accounts should, therefore, be, in my opinion, as follows:

To Captain Smith, arbitrator of G. W. Lake, esq.:	
Cost of erecting flour mill .....	\$2,107.74
Cost of running flour mill .....	2,801.82
	<hr/>
	4,909.56
Less proceeds of flour, etc., sold .....	1,937.99
	<hr/>
Balance due G. W. Lake .....	2,971.57

This sum of \$2,971.57 is all that I consider G. W. Lake fairly entitled to, and such sum should be deducted from proceeds of sale of the said flour mill; say \$5,500, and paid to G. W. Lake, thus leaving a balance of \$2,528.45 to be divided equally between G. W. Lake and R. J. McCaslin.

JOHS. BRUINIÈRE,

NAGASAKI, May 27, 1869.

I fully agree to the above statement.

J. U. SMITH,  
Arbitrator for G. W. Lake & Co.

[Inclosure No. 8.]

No. 1.—Duplicate. Account of sales of one flour mill, engine, and fixtures, sold by the undersigned for account and risk of J. S. Baron, esq., Shanghai.

SALES.

One flour mill, engine, and fixtures, sold for. .... Tls. 2,700.00

CHARGES.

Commissions .....	Tls. 130.00	
Advertising .....	70.00	
	<hr/>	200.00
Net proceeds .....		2,500.00

E. & O. E.

H. FOGG & Co.

SHANGHAI, September 30, 1866.

MAY 3, 1869.

I hereby certify that the net proceeds of above account of sale was duly passed to the credit of my account with the said Messrs. H. Fogg & Co., Shanghai, China.

J. S. BARON.  
T. T. MCGRATH,  
Bookkeeper.

No. 2.—Statement of cost of one steam flour mill, engine, fixtures, etc., shipped to Nagasaki, and now in the hands of Messrs. Lake & Co. there—In account with H. Fogg & Co., Shanghai—Interest, 12 per cent.

DR.

1866.		
Sept. 30.	To cash paid for one flour mill, engine and fixtures, as above .....	Tls. 2,700.00
Dec. 31.	To cash paid shipping charges to Nagasaki. ....	225.00
	To cash paid freight on do, to Nagasaki, \$225, at 75 .....	168.75

1867.		
Mar. 13.	To landing charges on do. at Nagasaki, \$225, at 75 .....	Tls. 169.20
	Due by average, October 20, 1866 .....	Tls. 3,262.95
	To interest on do. to date, May 3, 1869 (annually), at 12 per cent per annum (2 years and 195 days) .....	1,067.16
1869.		
May 3.	To total cost of above mill, this date .....	4,330.11
	E. & O. E.	

H. FOGG & Co.  
T. T. McGRATH,  
Bookkeeper.

SHANGHAI, May 3, 1869.

No. 3.—Statement of interest in said flour mill as per memorandum of cost attached herewith.

DR.

C. R. Simmons, one-third share of said mill, $\frac{1}{3}$ Tls., 4,330.11 .....	Tls. 1,443.37
--	---------------

CR.

By cash paid on account same December 31, 1866 .....	Tls. 900.00	
By interest on do. to date (annually), at 12 per cent (2 years and 123 days) .....	274.60	1,174.60
Balance due H. F. & Co. on above .....		Tls. 268.77
R. J. McCaslin, one-third share of said mill, $\frac{1}{3}$ Tls., 4,330.11 .....	1,443.37	
By cash received on account do. Decem- ber 31, 1866 .....	900.50	
By interest on do. to date, 2 years and 123 days (annually) .....	274.66	1,175.16

Balance due H. F. & Co. on above .....	268.21
H. Fogg & Co., one-third share said mill, $\frac{1}{3}$ Tls., 4,330.11 .....	1,443.37

To balance due H. F. & Co. by said mill this date, May 3, 1869 .....	1,980.35
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E. & O. E.

H. FOGG & Co.  
T. T. McGRATH,  
Bookkeeper.

SHANGHAI, May 3, 1869.

UNITED STATES CONSULATE-GENERAL,  
Shanghai, China, May 4, 1869.

Personally appeared before me, Thomas T. McGrath, who certified upon oath that the foregoing accounts, numbered 1, 2, and 3, respectively, are correct statements of same as taken from the books of Messrs. H. Fogg & Co.'s auction department.

Witness my hand and seal of this consulate-general the day and year last above written.

[SEAL OF U. S. CONSULATE.]

B. R. LEWIS,  
Acting Vice-Consul-General, in charge.



sale money on account of what may be due you on account of said mill, the matter of which we have this day agreed to submit to arbitration.

R. J. McCASLIN.

G. W. LAKE, Esq.

Seen and agreed upon.

ADRIAN & Co.

[Inclosure No. 11.]

No. 17.]

UNITED STATES CONSULATE,  
*Nagasaki, April 17, 1869.*

SIR: I am informed by Messrs. Adrian & Co. that you have stopped the work at the flour mill and taken away the keys. This is directly opposed to the agreement you have entered into with them and Captain McCaslin, and is an illegal act.

You are hereby ordered to return the keys and allow the work to be resumed. If you persist in your unlawful course you will subject yourself to a suit for damages.

Very respectfully,

WILLIE P. MANGUM,  
*United States Consul.*

GEORGE W. LAKE, Esq., *Nagasaki.*

[Inclosure No. 12.]

YOKOHAMA, *July 27, 1869.*

DEAR SIR: In our conversation at Kobe you said you would send, if you could obtain it, a copy of the letter that you showed me when I received the flour mill from you, which letter, if I am not mistaken, was signed by H. Holcomb and Captain Simmons. You stated that you delivered the letter to Captain Robinet. He is here now, but I do not know on what business; as I have not received the letter, it is of no use, that I can see, only to yourself. I have seen the United States minister, and showed all my documents. He said there is no appeal from the arbitration; and as I have been of the impression, there is no going back on what is decided on. In my interview the minister advised me to go back and receive the money awarded. I said it would not be paid. His answer was that it would, and must be, and there was no getting out of it, and that Mangum had no right to keep it back.

Hoping to hear from you soon, I remain,

G. W. LAKE.

R. J. McCASLIN, Esq.

To R. J. McCASLIN, *Hiogo, Japan:*

My brother writes that he has received part of the amount awarded, \$2,971.57, leaving the balance to be disputed by you, I suppose, or your friend, Mr. Howard Twombly. The only thing for you now to do is to order the balance of money awarded to be paid, as I do not see that my claim affects you any; and as Mr. Twombly does not seem to be in any hurry about having the matter closed up. I think you had better press the matter, unless you have some personal animosity against me; as I said before, the arbitration agreement was to be final, and it is decided now what is to be done. Mr. Twombly's claim is no good, only for one-third. Your third will stand good, for all that I can see.

I remain, dear sir, yours, truly,

G. W. LAKE.

[Inclosure No. 13.]

*Agreement between G. W. Lake & Co. and R. J. McCaslin.*

First. That G. W. Lake & Co. receive from Messrs. Cherry & Co. a steam flour mill, as it now lies in his yard, and go down and erect the same in his ship-building yard at Naminohua, and furnish money to put said mill in order, and sell said mill when complete, or keep it running, as said G. W. Lake & Co. sees fit, or to the advantage of himself and owners of said mill.

Second. That G. W. Lake & Co. shall receive for their services and money invested one-half of all net profits.

Third. Should said owner, R. J. McCaslin, wish to have said mill put up at auction, he must pay said G. W. Lake & Co. all expenses that said mill has cost in erecting.

Fourth. Should said mill be sold by mutual consent, then each to stand one-half profit or loss.

Fifth. That no person or persons not connected herein not to be allowed to meddle or have anything to do with said mill unless agreeable to G. W. Lake, either for better or worse.

G. W. LAKE & CO.  
R. J. MCCASLIN.

Witnesses:

CHAS. CAVANAGH,  
EDWARD LAKE.

[Inclosure No. 14.]

*Account of sundries bought, and for carpenters, blacksmiths, and coolies, for flour mill, since taken from C. Cherry.*

DR.

1867.		
Mar.	14. 2 carpenters, 1 day, and 4 coolies .....	\$1.98
	15. 4 coolies and 4 carpenters .....	2.64
	16. 7 carpenters and 3 coolies .....	3.30
	17. 5 carpenters and 4½ coolies .....	3.13½
	18. 12 coolies, fetching around mill .....	3.96
	19. 4 carpenters, 24 coolies .....	9.24
	20. 27 coolies, 3 carpenters .....	9.90
	21. 1 carpenter, 9 coolies, fetching machine .....	3.30
	221 feet timber, for shed .....	16.80
	26 stuboes ½-inch boards .....	13.00
	23 pounds nails .....	2.76
	120 pounds manila rope, for tackles .....	16.80
	80 pounds hemp rope, for stops .....	12.80
	4 double blocks .....	33.30
	4 wooden rollers .....	2.80
	22. 9 coolies, 1 dozen baskets .....	3.47
	23. 10 coolies, 33 sheets emery paper .....	8.25
	1 keg white paint; turpentine .....	5.00
	12 pounds tallow, 1 gallon paint oil .....	3.50
	2 paint brushes .....	2.50
	1 keg red lead .....	8.00
	24. 2 iron scrapers, 17 coolies .....	8.11
	25. 13 coolies, 6 carpenters .....	6.27
	1 monkey wrench, 1 blacksmith .....	4.33
	1 stanchion for shifting machine .....	.50
	1 cross bar for same, 1 forge, 1 day .....	1.20
	27. 10 carpenters, 9 blacksmiths .....	6.27
	2 forges, 2 days .....	4.00
	24 sheets emery paper .....	2.80
	2,640 brick for bed of boiler .....	18.48
	28. 25 coolies, cleaning ironwork .....	8.25
	55 pounds oakum .....	6.60
	1 screw bolt for cylinder .....	.50
	29. 135 pounds plate iron .....	20.25
	5,310 bricks .....	37.17
	20 coolies, 2 days .....	6.60
	30. 20 carpenters and blacksmiths .....	6.60
	4 forges, 2 files .....	6.50
	31. 1,247 bricks .....	8.73
	27 coolies, cleaning ironwork .....	8.94
	200 bags lime, at 15 cents .....	30.00
Apr. 1,	2. 32 carpenters and blacksmiths .....	10.56
	2. 5 masons, 20 sheets emery paper .....	7.65
	4. 20 coolies, 1 monkey wrench .....	10.60

1867.			
Apr	4.	4 forges, 2 gallons paint oil .....	\$8.00
	5.	25 coolies, carrying mill stones .....	8.25
		29 carpenters and blacksmiths, 2 days .....	9.57
	6.	10 coolies .....	3.30
		385 feet lumber, sawed, for shed .....	7.70
		3,430 bricks .....	24.01
	7, 8.	27½ coolies .....	9.08
		25 carpenters and blacksmiths .....	8.25
		7 masons, laying foundation .....	2.31
	10.	Brass sieves for sifting bran .....	10.00
		1 shovel, 8 pounds tallow .....	2.00
		41 pounds packing: turpentine .....	15.35
	12.	3,300 bricks, set boiler in .....	23.10
		4,125 bricks, set boiler in .....	28.87½
	13.	107 bags lime .....	12.87
		5 carpenters, 11 blacksmiths .....	5.28
	14, 15.	30 coolies, 11 masons .....	13.53
	7, 10.	18 coolies, digging for foundation, boiler .....	5.94
	14.	1,200 bricks .....	8.40
		20 coolies, carrying dust and sand .....	6.60
	15.	4½ p'astermen setting boiler .....	1.48
		72 feet ¾-inch boards for sifting machines .....	2.16
	16, 17.	19 coolies, 5 masons .....	7.92
		12 blacksmiths repairing balance wheel .....	3.96
		9 carpenters, 4 extra coolies .....	4.29
	18.	½ pound twine, 1 gallon castor oil .....	1.80
		4 pounds tallow .....	.50
		90 feet 3-inch planks, side balance wheel as box .....	9.00
		60 pounds iron spikes, nut in box .....	12.00
		2 pounds nails, repair frame engine .....	.40
		10 feet 3-inch plank, repair engine .....	3.00
	19.	48 pounds iron bolts and screw and nuts for frame brickwork in boiler .....	9.60
		9 feet 3-inch plank, frame brickwork boiler .....	.90
		580 pounds iron fire bars .....	116.00
		8 screw bolts for screw steam pipe to boiler .....	.40
		16½ pounds rubber packing .....	16.50
		50 piles under chimney and mill .....	4.00
		1 small vise .....	5.00
		20 sheets emery paper .....	2.40
		1 bottle turpentine .....	1.00
		9 carpenters .....	2.97
		9 blacksmiths .....	2.97
		35 coolies .....	11.55
		8 plastermen .....	2.64
	21.	20 pounds lead for packing pipes .....	4.00
		20 pounds hemp rope for strops .....	3.20
		6,975 bricks for bed of boiler .....	34.83
		8 carpenters .....	2.64
		9 p'astermen .....	2.97
		6 blacksmiths .....	1.98
		67 coolies .....	15.51
	26.	20 bags lime .....	2.40
		2 glass water gauges .....	1.50
		24 sheets emery paper .....	2.80
		1 bottle castor oil .....	.50
	28.	1 blacksmith repairing wheel .....	3.96
		13 carpenters .....	4.29
		48 coolies .....	15.84
		10 flat stones to lay over piles under ching .....	3.50
	29.	1 bottle oil .....	.50
		3 gross small screws .....	2.25
		5 stuboes ¾-inch boards .....	2.00
	30.	Repairing tin cups for elevating wheat .....	1.00
		17 carpenters .....	5.61
May	3.	11 blacksmiths .....	3.63
		37 coolies .....	12.21
		Wignall, J. H. ....	100.00

1867.		
May	9.	8½ yards white bolting machine cloth for windows..... \$2.50
		10½ carpenters..... 3.79
		10½ blacksmiths..... 3.79
		5 b. bamboos for roof for shed..... 1.00
	10.	10 baskets, dust baskets, 8 dirt sieves..... 1.00
		½ pound leather..... .50
		100 pounds steam safety valve..... 16.35
	12.	12 carpenters..... 3.96
		12 blacksmiths..... 3.96
		30 coolies..... 9.90
		Corner boards sifting machine..... .50
		3 flour spouts..... 1.00
		2 sheets iron plate, or sheets over wheel of flour elevator..... 4.00
	15.	9 carpenters..... 2.97
		2½ days blacksmith..... .82
		25 coolies..... 8.25
		12 large bags lime..... 3.00
	19.	9 carpenters fitting frame bolting machine..... 2.97
		5 blacksmiths..... 1.65
		17 coolies..... 5.61
		1 camphor-wood plank for pattern..... 1.00
		Makits for lime and mason plastering well..... 10.00
	25.	18 carpenters..... 5.77½
		11 blacksmiths..... 3.63
		35 coolies..... 11.55
		Recasting safety valve..... 4.00
	30.	558 pounds cast-iron fire bars..... 100.48
June	—.	9½ carpenters..... 3.07
		6 blacksmiths..... 1.98
	8.	8 coolies..... 2.64
		8 carpenters..... 2.64
		4 blacksmiths..... 1.32
	10.	8 coolies..... 2.46
		5 carpenters..... 1.65
	12.	3 blacksmiths..... .99
		10 coolies carrying water to boiler..... 3.30
		12 packages black lead for wheels..... 1.50
		1 monkey wrench..... 4.00
	16.	1 keg paint..... 3.00
		1 yard canvas, 20½ coolies..... 7.26
		2 pounds tallow..... .25
		19½ carpenters..... 6.43½
		8 blacksmiths fitting pipes..... 2.64
	18.	20 coolies..... 6.60
		35 bundles shingles..... 6.00
		Bamboos for roof of shed..... .50
		Brass pipe for steam gauge..... 1.50
		7½ pounds rubber packing..... 7.50
	20.	Making tank for well..... 12.00
		Bolting cloth..... 18.50
		10 carpenters..... 3.30
		5 blacksmiths..... 1.05
		8 coolies..... 2.64
July	29.	Makills, on account contract to build chimney..... 189.90
		Casting 1 wheel for wheat sifting machine..... 3.00
		3½ tons coal..... 28.00
		13 coolies, cleaning mill..... 4.29
	3.	1 day carpenter..... .30
	7.	7 boats dust to plaster around wall..... 7.00
		4 coolies..... 1.32
		1 keg black paint..... 2.50
		1 gallon paint oil..... 2.00
		1 bottle turpentine..... 1.00
		2 paint brushes..... 2.00
	10.	9 carpenters..... 2.97
	14.	12 carpenters working on shed..... 3.96
		Copper tacks..... .25
		8 coolies..... 2.64

1867.			
July	14.	2 water buckets .....	\$1.00
		2 gallons castor oil .....	3.50
		6 pounds tallow .....	.75
		1 keg green paint .....	3.00
		10 piculs firewood .....	2.30
		22 inches 1½ gas pipe for water gauge, from Nicolls & Boyd ..	2.30
		4 nuts and washers for same, from Nicolls & Boyd .....	.16
		2½ washers, from Nicolls & Boyd .....	1.00
		1 pound brass for spindle .....	.50
		½ pound copper wire .....	.55
	16.	Blacksmiths, repairing 2 packing screws .....	5.00
		6 coolies, digging well .....	1.98
		Digging well deeper and plastering, per contract .....	8.00
		8 screw bolts on steam gauge to boiler .....	.50
		13 pounds bolts, screwing engine to frame of foundation .....	2.60
		32 pounds iron, for hoop balance wheel to shaft .....	6.40
		12 screw bolts and nuts for piping to well .....	2.40
		4 pounds iron batin on flour elevator frame .....	.80
		6 feet camphor wood for conductor .....	.50
		2 irons to lift millstones off and on .....	.50
		15 pounds plate iron on wooden wheel for governor belt on shaft ..	3.00
		5 large rasps and files .....	14.00
		2 pounds iron cup for shaft of flour elevator over tank .....	.40
		40 feet 5-inch boards .....	1.60
		6 bolts for water pipe .....	1.00
		200 feet boards, load around shed .....	8.00
		10 pounds nails .....	2.00
		6 cold chisels .....	6.00
		3 small files .....	1.50
		2 chipping hammers .....	3.00
		1 sledge hammer .....	3.00
		1 pair large vises .....	20.00
		3 oil feeders .....	1.50
		2 iron water buckets .....	1.00
		Carpenters and coolies, shifting door .....	4.50
		9 coolies .....	2.97
		10 carpenters .....	3.30
		7 tins for catching oil .....	1.00
		2 pounds nails .....	.40
		90 feet 2-inch plank for bench .....	6.30
		Digging well 5 feet .....	15.00
	31.	Henry Gibson, for 139 days' labor up to 31st July, 1867 .....	371.13

Total cost of erecting the flour mill before running . . . 2,127.98

E. and O. E.

G. W. LAKE & Co.

*Flour-mill account after erected and ready and run, labor, coals, water, etc.*

July	25.	72½ piculs wheat .....	\$280.00
	29.	37 piculs wheat .....	135.00
	30.	28 piculs wheat .....	104.00
Aug.	4.	331.15 piculs wheat .....	1,057.87
	20.	12 piculs wheat .....	45.00
		10 piculs wheat .....	36.30
		31 piculs wheat .....	104.00
July	—.	4 pieces cotton drill .....	17.00
	29.	2 pieces cotton drill, for bags .....	8.50
Sept.	5.	5 pieces cotton drill, for bags .....	21.25
	20.	4 pieces cotton drill, for bags .....	17.00
	22.	2 pieces cotton drill, for bags .....	8.25
	27.	6 pieces cotton drill, for bags .....	25.50
July	30.	4 coolies carrying wheat to mill .....	1.32
		22 days, coolies 22 days .....	7.26
	31.	2 coolies .....	.66
Sept.	2.	4 coolies .....	1.32

Sept.	2.	8 days, 1 coolie .....	\$2.64
		2 coolies, 1 month .....	10.60
		2 gallons castor oil .....	4.00
		$\frac{1}{2}$ picul vegetable oil .....	7.00
		5 tubs for flour, 3 basket sieves sifting wheat .....	4.00
		Freight of 331.15 piculs wheat from Yokohama .....	140.00
Aug.	10.	16 coolies working on mill .....	5.28
		9 coolies digging well deeper .....	2.97
		2 tons coal .....	13.00
		1 ton coal .....	8.50
		3 carpenters fitting trolls .....	.99
	12.	2 coolies .....	.66
		2 orgers .....	6.00
		7 tons fine coals .....	49.00
		140 piculs coals .....	72.00
		2 boats full of water for boiler .....	1.75
		2 gross small screws .....	2.00
		1 dozen packages black lead .....	1.00
Sept.	5.	16 feet 1-inch boards .....	1.12
		14 feet 2-inch boards .....	.64
		2 pounds nails .....	.30
		Coolies' and carpenters' work, 1 month .....	16.00
		$1\frac{1}{2}$ pounds twine to sew bags .....	.30
		4 tins green paint .....	2.00
		Boy and coolies, Japan fireman .....	5.75
	8.	1 carpenter .....	.33
		6 feet brass sieve .....	6.00
		38 piculs coals .....	17.00
	20.	12 coolies .....	3.96
		Water, 2 days .....	.66
		2 bags lime and wood .....	1.00
		4 pounds tallow .....	.50
		2 pounds twine .....	1.20
		5 pounds oakum .....	.60
		24 pounds sheet emery paper .....	2.80
		8 pounds oakum, 96 cents; carrying water to boiler, \$3.75 .....	4.71
		100 piculs coals .....	43.00
		Labor and coolies carrying flour .....	2.50
	28.	22 days, coolies running mill .....	1.27
		2 carpenters .....	.66
		Baskets carry grain and sieves and thread .....	.50
		Winnowing machine .....	.60
	27.	Water for 3 days for boiler .....	1.00
		3 coolies 1 month .....	17.00
		2 pounds candles, 18 coolies .....	6.44
Oct.	—.	$2\frac{1}{2}$ gallons oil .....	2.50
		1 keg white zinc .....	4.00
		10 pounds red lead .....	1.25
		6 pounds oakum .....	.72
		1 barrel turpentine .....	1.00
		2,000 bricks lay around mill and well .....	14.00
		1 package screws .....	1.50
		1 stick, 4 feet teak .....	2.00
	12.	7 carpenters .....	2.31
		6 coolies .....	1.98
		$1\frac{1}{2}$ pounds rubber, for steam valves .....	1.50
		1 iron door under boiler fireplace .....	6.00
		1 brass cup under spindle .....	2.00
		26 pounds yellow ochre .....	2.00
	20.	5 bags lime .....	7.00
		1 pound nails, and plaster .....	1.50
		12 days carpenters .....	3.96
		$\frac{1}{2}$ dozen sheets emery paper .....	.75
		8 pounds oakum clean machine .....	.96
	30.	3 coolies, 1 month labor .....	12.50
		1 keg green paint .....	4.00
		8 pounds tallow .....	1.00
		24 feet 2-inch plank .....	1.00

Oct. 30.	1 bottle of lamp oil .....	\$0.25
	1 keg white lead .....	4.00
	2 pounds nails .....	.25
	10 bags lime plaster around well .....	2.00
	Sand and 2 gallons paint oil .....	4.20
	4 coolies 1 day .....	1.32
	4 carpenters 1 day, making box to catch flour and shorts .....	1.32
	1 stubo board .....	.70
Nov. 30.	3 coolies 1 month .....	11.52
Dec. 12.	Paid of H. Gibson up to date for 124 days' labor .....	344.40
30.	Rent of land and buildings the mill stands on for 10 months and 16 days .....	316.00
		<hr/>
		3,106.85

E. and O. E.

G. W. LAKE & Co.

*Flour-mill credit for flour, shorts, and bran sold.*

July.	Shorts and bran sold .....	\$291.05
	160 bags flour .....	431.04
	100 bags flour sold baker in Gattmachi .....	200.00
	29½ barrels, in bags, sold shipping and our baker .....	295.00
	86½ barrels, in bags, left on hand, at \$8 .....	692.00
		<hr/>
		1,909.09
	Commissions for selling flour, shorts, and bran .....	95.45
		<hr/>
		1,813.64

CR.

For things sold out of mill:

77 pounds, bales, grain.....	\$15.40	
1 monkey-wrench.....	4.00	
1 ton coal.....	6.00	
		25.40
500 bricks sold Wignall.....		3.50
		1,842.54
Amount expended before trying to run.....	\$2,127.98	
Amount expended after being started.....	3,106.85	
Commissions and interest on cash advanced.....	261.74	
		5,496.57
		3,654.03

E. and O. E.

G. W. LAKE & Co.

NAGASAKI, to December 30, 1867.

Mistake in the account Cr .....	\$6.03
Mistake in the account Dr .....	18.00
Mistake in the account Dr .....	10.00
1 engineer to receive wages for 11 days, \$1.50--\$16.50 .....	26.68
To add .....	20.38
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1867.

Dec. 31.	Amount brought forward .....	3,674.41
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1869.

April 30.	Interest on the above amount for 16 months, at 1 per cent .....	587.90
	Godown rent for 16 months, at \$30 .....	480.00
	To commission on sale of mill without my consent, being taken out of my hands in November 31 last by power of attorney, authenticated by W. P. Mangum, at 2½ .....	137.50
		<hr/>

Made up to April 30, 1869 .....	4,879.81
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E. and O. E.

G. W. LAKE & Co.

[Inclosure No. 15.]

NAGASAKI, April 16, 1869.

SIR: Hearing that the arbitration proceedings in reference to the claim I have against Mr. R. J. McCaslin and the flour mill have been stopped pending an inquiry into a claim advanced by Messrs. Fogg & Co., I shall feel obliged by your attaching the flour mill now erected on my shipbuilding yard A at Namnohera, until my accounts against the same are satisfactorily settled.

From yours, very respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,  
United States Consul.

[Inclosure No. 16.]

NAGASAKI, April 29, 1869.

H. SCHIFF, FOR MESSRS. ADRIAN & Co., }  
v. } Action for damages.  
G. W. LAKE.

To the United States consular court, Nagasaki, Japan:

G. W. Lake.—Defendant's answer and plea.—Summoned to answer the plaintiff, H. Schiff.

The defendant states that he never agreed to give up his lien on the flour mill erected by Messrs. G. W. Lake & Co., on the lot owned by G. W. Lake, and known as shipbuilding yard A, other than in a letter dated April 15, 1869, to Messrs. Adrian & Co., in which the defendant simply informed them that he had received their letter dated April 7, and would allow them, on Mr. Schiff's word of honor to pay me for the mill (after the arbitrators gave their decision), to take down the mill and remove it, but never gave my permission for the removal of the mill off my ground. I have informed Mr. Schiff verbally, both before and after the letter was written, that on no consideration would I allow the machinery to be removed off the ground unless Mr. Schiff would give me his promissory note for the amount due me on said mill, this being then settled by arbitration, my claim being \$4,800, or thereabouts. This letter (if it can be construed into an agreement) was written to favor Messrs. Adrian & Co., as a final decision of the arbitrators was then to be given in two days. I did not give the word "remove" due consideration, but never thought the decision of the arbitrators was to be delayed by order of the United States consul. I have refused to remove, and it was and still is my thorough determination not to allow the mill to go off the ground till my claims were satisfactorily settled, and I even begged the United States consul, Mr. W. P. Mangum, to assist me and have the matter satisfactorily settled, so that there would be no trouble hereafter; the only answer I could get was that "the letter written by R. J. McCaslin, seen and agreed upon by Adrian, was all I required." On the strength of that I allowed the men to work removing the machinery belonging to the mill, so that it might go off my ground when I was satisfactorily secured, according to the arbitrator's decision.

As to the question of damages and demurrage for detention of brig *Nogie*, the defendant has good reason to believe that the brig is sold to Japanese, and is not the property of Adrian & Co., and is bound to Osaka if she takes the mill or not; secondly, that she is not yet loaded, but is awaiting for other cargo, and consequently is not detained at all to receive the mill.

If the court award damages, it should be against the mill, not against the defendant, who only wishes to be secured, and never engaged ship or freight with plaintiffs for said mill. The defendant further says that, as he has a lien on the mill for rent due and money expended, which mill is on his property and in his possession, there is no law of the United States, to his knowledge, which can compel him to give up this lien until he is properly secured.

The defendant further states that, from the discrepancy of the statements made by Messrs. Adrian & Co. and Mr. R. J. McCaslin, he has good reason to believe the intention of the parties is to deprive him of his lien. These letters are contained in the letters received, viz. the letters from McCaslin state that the mill is sold for \$5,500, supposed to be cash. Messrs. Adrian & Co., however, stated verbally that the mill is sold on a credit to Japanese, and also that they claim a com-

mission. These transactions took place between McCaslin and Messrs. Adrian & Co., to which the defendant was no party; and if the defendant gives up possession, and the Japanese fail in payment, and also McCaslin, to whom is the defendant to look for payment without having some promissory note from responsible parties, or, as is usual in all cases in release of lien, to receive cash in hand? I have never delivered the keys of the mill unless on a receipt that they are to be delivered at my request.

The arbitrators in the case of defendant and McCaslin being ordered to withhold their decision, and Adrian & Co. refusing the security asked, the defendant holds his lien in said mill, and is ready, and always has been, to deliver it to any responsible parties either on receipt of award of arbitrators or proper security, satisfactory to him that it will be paid.

To avoid endless litigation the defendant has offered to take the lowest amount awarded him by the arbitrator for McCaslin, and leave the balance in dispute in the hands of the plaintiffs until a final decision is given by the third arbitrator chosen.

The defendant further states that he is not acting for himself altogether, but for the firm of G. W. Lake & Co. His partner also refused to deliver possession until the money awarded, or to be awarded, in the case of McCaslin is either paid or properly secured, and respectfully asks the following witnesses for his defense to be summoned, and their evidence taken under oath, viz. Captain Cowan, of brig *Nogie*; Mr. Robertson, of Messrs. Boyd & Co.; Mr. John Maltby, of Messrs. Maltby & Co.; Mr. Brunier, of Messrs. Case & Co.; Capt. J. U. Smith, of Nagasaki.

G. W. LAKE.

Signed and sworn to before me this the 8th day of May, 1869.

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 17.]

No. 24.]

UNITED STATES CONSULAR COURT,  
*Nagasaki, May 7, 1869.*

Sir: It has been a week to-day since an extension of time was granted you to give in your answer in the flour-mill case; although you were warned at the time to make no unnecessary delay, more than ample time has now been allowed you, and I have to inform you that if you do not appear by 11 o'clock a. m. to-morrow, the 8th instant, to give in your answer under oath, I shall proceed to give judgment against you by default.

Very respectfully,

WILLIE P. MANGUM,  
*United States Consul.*

GEORGE W. LAKE, Esq.

[Inclosure No. 18.]

NAGASAKI, May 7, 1869.

To the United States Consular Court.

SIR: In answer to your letter of this date, No. 24, I beg to inform the court that I did appear at the United States consular court at 11 o'clock a. m., as per summons dated April 26, and found the court-room door locked, and it continued locked up to the time I left to go home at 11 o'clock 45 minutes a. m. Plaintiff did not appear at the consulate. I was prepared to hand in my statement under oath, but as there was no court on the date of April 30, at 11 a. m., I consider the plaintiff is the defaulter.

I am prepared, and always have been, to deliver up the flour mill now in dispute on receipt of the amount due me for erecting said mill, and rent due; but as the money, as per the lowest arbitrator decision, and even good security, satisfactory to myself, is still refused, I will not deliver over my lien until I am satisfactorily secured against loss and all liabilities of hereafter litigation.

G. W. LAKE.

W. P. MANGUM, Esq.,  
*United States Consul.*

[Inclosure No. 19.]

UNITED STATES CONSULAR COURT,  
Nagasaki, May 13, 1869.

UNITED STATES	}	Commitment for contempt.
<i>v.</i>		
GEORGE W. LAKE.		

To L. M. DENT, Esq., *Marshal of said Court.*

SIR: In the name of the United States forthwith commit George W. Lake, of Nagasaki, to jail for twenty-four hours, and collect of him \$50 fine, for his contempt of this court and of the United States, committed to-day, by refusing to obey the order of this court to deliver up, on demand, the keys of the flour mill situated on his premises, in order that said mill be removed in compliance with the judgment pronounced in this court, on the 12th instant, in the case of H. Schiff, representing Messrs. Adrian & Co. *v.* George W. Lake.

And if George W. Lake does not, on demand, pay said fine and the costs taxed at \$15.50, with your legal fees, you will imprison him for thirty (30) days more, for all which this shall be your sufficient warrant.

Given under my hand and seal of the United States consulate this 13th day of May, 1869.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 20.]

UNITED STATES CONSULAR COURT,  
Nagasaki, May 13, 1869.To L. M. DENT, *Marshal of said Court.*

SIR: You are hereby commanded to attach the body of George W. Lake, if found within this consular jurisdiction, and bring him before this court to answer a contempt by him committed in not obeying the order of this court to deliver up, on demand, the keys of the flour mill situated on his premises, in order that said mill be removed in compliance with the judgment pronounced in this court on the 12th instant, in the case of H. Schiff, representing Messrs. Adrian & Co., *v.* George W. Lake; and of this writ make due return.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 21.]

UNITED STATES CONSULAR COURT,  
Nagasaki, May 13, 1869.

UNITED STATES	}	Charged with committing contempt out of court by refusing to obey its order.
<i>v.</i>		
GEORGE W. LAKE.		

Before Willie P. Mangum, United States consul, acting judicially.

*Summary proceedings.*

SIR: The prisoner was arrested and arraigned upon affidavit of Ferdinand Plate, to the effect that he (the prisoner) had refused to give up to him, when he demanded them, the keys of the flour mill situated on prisoner's premises in accordance with the judgment of this court, in the case of H. Schiff, representing Messrs. Adrian & Co., *v.* George W. Lake, delivered in this consular court on the 12th instant, although he (the prisoner) well knew that said Ferdinand Plate came in the name and by the order of plaintiff in the above-mentioned case to take possession of a right granted by the judgment of this United States consular court above referred to.

Prisoner was sentenced for this contempt of court and of the Government of the United States to be imprisoned twenty-four hours in jail and pay a fine of \$50, together with costs, and if, on demand, he should refuse to pay such fine and costs, to be committed for thirty days more.

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 22.]

UNITED STATES CONSULAR COURT,  
*Nagasaki, May 13, 1869.*

Ferdinand Plate, being duly sworn, says that he was ordered this morning by Mr. Schiff, of Messrs. Adrian & Co., to call on George W. Lake and demand of him the keys of the flour mill situated on his premises, in order that he might proceed to have said mill removed, in compliance with the judgment delivered in the United States consular court on the 12th instant, in the case of H. Schiff, representing Adrian & Co., v. George W. Lake: that said George W. Lake refused to deliver said keys when he asked for them, saying that he would wait until the United States admiral should arrive: that the court was not regular that tried the case.

FERD. PLATE.

Signed and sworn to before me this 13th day of May, 1869.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 23.]

UNITED STATES CONSULAR COURT,  
*Nagasaki, May 15, 1869.*

To L. M. DENT, *Marshal of Said Court.*

SIR: You are hereby commanded to proceed to the residence of George W. Lake and make diligent search for the key of the flour mills situated on the premises of said George W. Lake, and, when found, to deliver said key to the agent of the plaintiff in the case of H. Schiff, representing Messrs. Adrian & Co., v. George W. Lake, which was heard and decided in this court on the 12th instant in favor of the plaintiff. If the key is not found at the residence search the body of said George W. Lake; and of this writ make due return.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul, Acting Judicially.*

[Inclosure No. 24.]

NAGASAKI, *June 15, 1869.*

DEAR SIR: I beg to remind you that I have applied to Messrs. Adrian & Co. for the payment of the sum of money due me by the decision of the arbitrators between myself and R. J. McCaslin for the owners of the flour mill.

You mentioned before the court, on the 12th of April, that the security (H. Schiff's letter and R. J. McCaslin's letter) was good and sufficient security. Will you please let me know who is to pay the interest on this money? Am I to look to you individually, or to Adrian & Co.? If you do not intend that I shall be allowed to receive the money honestly due me, please inform me, and you will greatly oblige.

Yours, respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,  
*United States Consul.*

[Inclosure No. 25.]

\$400.]

Received from Edward Lake, for G. W. Lake, the sum of four hundred dollars (Mexican), amount of damages against said G. W. Lake in a suit, H. Schiff, representing Messrs. Adrian & Co., v. G. W. Lake, for refusal to deliver a certain flour mill according to agreement.

Nagasaki, May 14, 1869.

L. M. DENT,  
*United States Marshal.*

\$84.55.]

Received from Edward Lake, for G. W. Lake, the sum of eighty-four dollars (Mexican) and fifty-five cents, being amount of costs of court in above case of H. Schiff, representing Messrs. Adrian & Co., v. G. W. Lake.

L. M. DENT,  
*United States Marshal.*

[Inclosure No 26.]

\$69.50.]

Received, Nagasaki, May 15, 1869, from Edward Lake, for George W. Lake, the sum of sixty-nine dollars and fifty cents, being amount of fine and costs for a second contempt of court in a suit, H. Schiff, for Adrian & Co., v. G. W. Lake.

L. M. DENT,  
*United States Marshal.*

[Inclosure No. 27.]

\$65.50.]

Received from Edward Lake, for G. W. Lake, the sum of sixty-five dollars (Mexican) and fifty cents, being amount of fine and costs for contempt of court in George W. Lake refusing to obey order of the United States consular court, in a suit of H. Schiff, representing Messrs. Adrian & Co., for damages in refusing to deliver a certain flour mill.

L. M. DENT,  
*United States Marshal.*

[Inclosure No. 28.]

No. 51.]

CONSULATE OF THE UNITED STATES,  
*Nagasaki, July 7, 1870.*

SIR: I have the honor to acknowledge the receipt of your dispatch No. 43, of May 20, 1870, with its inclosure containing a note from the Hon. Benjamin F. Butler, a letter from certain parties "selectmen" of Topsfield, and two letters from the brothers George W. Lake and Edward Lake, setting forth certain wrongs that they complain of having received at my hands in Nagasaki.

In reply I have to say in the first place that these two letters of the brothers Lake are most villainous perversions of the truth, and beg to submit the following explanation, to wit: In the spring of last year a suit was instituted in this consulate against George W. Lake by Messrs. Adrian & Co., a Belgian firm in Nagasaki, to recover damages for the nonfulfilment of a contract and to compel fulfilment of the same. This contract was to the effect that Messrs. Adrian & Co. should sell on commission for the sum of \$5,500, and remove the same, a certain "flour mill," situated on the premises of G. W. Lake and owned by him and one R. J. McCaslin, of Shanghai, and retain this money in their hands until the dispute between Lake and McCaslin as to the amount each was entitled to receive of the proceeds of this sale should be decided by arbitration. In compliance with this Messrs. Adrian & Co. effected the sale of the mill to certain Japanese residing at Osaka, and proceeded to remove it to be transported to Osaka. At this juncture Lake, in defiance of his contract, stepped in and stopped the removal by taking the key from the agent in charge and locking up the mill. Hence the suit.

The case was tried before me, with the requisite assessors, on the 12th of May, 1869, and judgment given for the plaintiffs. The defendant contumaciously refused to comply with the judgment and obey the orders of the court. For this contempt he was summarily punished by a fine of \$50 and imprisoned for twenty-four hours. He repeated his contempt after his release, and was again summarily punished in the same way.

The judgment of the court was enforced; the mill was removed and transported to Osaka, to be delivered to the purchasers. In due time the arbitrators who were to decide upon the respective claims of Lake and McCaslin made their award, and the price of the mill, which was stipulated to be paid on its delivery at Osaka, was received by Messrs. Adrian & Co. In the meantime a third party appeared, Messrs. H. Fogg & Co., of Shanghai, by J. F. Twombly, claiming an interest in this mill property as part owner, and holding certain charges against it to the

amount of some 1,200 taels, equal to about \$1,600, for auction expenses, storage, etc., in Shanghai, whence Lake had brought the mill.

The arbitration showed that Lake had expended a large sum of money in erecting the mill and running it, for which he had been only partially refunded by the proceeds of the sale of the flour, leaving the sum of \$2,971.57 actually paid out of his own pocket. This amount the arbitrators awarded to him, and the residue of the \$5,500, to wit, \$2,528.43, to be equally divided between him and McCaslin. The award was made on the 27th of May, and the money for the mill received by Messrs. Adrian & Co. from the Japanese purchasers on the 15th of July following.

They immediately informed me of its reception, and I forthwith instructed them to pay over to Lake the \$2,971.57, and to retain the residue, \$2,528.43, pending the investigation of the claim of Messrs. H. Fogg & Co. Before this money was received by Messrs. Adrian & Co., G. W. Lake went away from Nagasaki, leaving his brother, Edward Lake, in charge of his business.

Finally McCaslin settled the matter as far as he was concerned with Messrs. H. Fogg & Co., in Shanghai, by an amicable compromise, and it then became narrowed down to a claim against Lake for about \$800, and this was eventually settled by Edward Lake paying to Drummond Hay, agent appointed by Messrs. H. Fogg & Co. to attend to this business, \$400.

I had advised both parties to settle this matter amicably out of court, but at no time made mention of any sum that I considered fair to offer or receive. The proposal by Lake to pay \$400 was entirely voluntary on his part. Hay at first refused to accept this amount, and only after considerable delay and with much reluctance did he finally assent to it.

When Lake first told me that he had proposed to compromise by paying \$400, but that Hay had refused to accept this sum, he not only expressed his willingness to settle the matter in this way, but appeared anxious to have it done, and at no time did he ever express an objection, as far as I am aware, to paying this amount after his first proposal to do so.

Under such circumstances, the idea that Lake was compelled by me to "sacrifice" \$400 is so glaringly preposterous that it could only have originated in the distempered imagination of such a creature as Edward Lake or his brother.

In the above-mentioned case of Messrs. Adrian & Co. v. G. W. Lake the assessors unanimously assented to the consul's decision; consequently the decision was final. (Vide section 10, act of Congress, June 22, 1860, giving judicial powers to ministers, consuls, etc.) The law on this point was fully explained to Lake, and he well knew that he was not entitled to an appeal.

The Capt. E. Tolman, mentioned in the letter of G. W. Lake and whose punishment by imprisonment and subsequent deportation has aroused so much indignation in his bosom, was one of the most violent and desperate of all the foreign population of Nagasaki, and a man of whom the natives stood in great dread. He had several times been arraigned before the consular court and punished, and, on the occasion referred to, the offense which Lake styled "a simple assault and battery" was the beating an inoffensive Japanese boatman in the most brutal manner and injuring him to such an extent that he was unable to walk about for several days. When Tolman was arrested for this offense he threatened to shoot the marshal, and at the trial carried into the court room concealed upon his person a loaded revolver, which was taken from him and found to contain five ball cartridges.

This man Tolman and the Lakes were intimate friends and companions, and among such characters here the Lakes appeared to find their most congenial associates, all of them "birds of the same feather," men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties and never hesitating to pervert the truth to suit their purposes.

G. W. Lake, by his lawlessness, forfeited several years ago his right to reside in Japan, and only by sufferance did he remain here. The forbearance that has been extended to him in not having the law enforced, and allowing him to remain in the country in consideration of his youth, with the hope that more age and experience would teach him to correct his evil propensities, he has proved himself unworthy of and utterly incapable of appreciating. If strict justice had been dispensed to him he would have been deported long ago. The consciousness of this fact, with perhaps an uneasy feeling that if he should return to Japan he might not be allowed to continue in the country may have something to do with his extreme anxiety about my remaining at Nagasaki.

I quote from the court records of this consulate the following offenses for which he has received judicial punishment, to wit: June 16, 1863, charge of assault and battery on the person of Levi N. Burdick; fined \$25 and costs. August 31, 1865, charge of assault and battery with a dangerous weapon upon a Japanese; com-

plaint lodged by the native authorities. As this case was especially of a heinous character, I quote the decision of the court in full, marked inclosure No. 1. September 28, 1866, charge against both George W. and Edward Lake of assault and battery on one John Brown; convicted, but under extenuating circumstances, and fined \$1 each with costs. July 10, 1867, charge of unlawfully detaining and wounding a Japanese officer, sentenced to a fine of \$25 and imprisonment ten days, and again warned that he had forfeited his right to reside in the country. On the way to jail under this sentence he escaped from the marshal by drawing a revolver and threatening to shoot him; was concealed some days in the vicinity of Nagasaki by his friend, the aforesaid Capt. Elias Tolman, and then smuggled by him on board a steamer bound for Yokohama. He stayed awhile at Yokohama, thence proceeded to China, and after skulking about for several weeks returned to Nagasaki, was rearrested and imprisoned for his allotted term. He was also implicated in smuggling at an unopened port in the spring of 1867, on the ship *Anne Kimball*, of which he was the charterer. The case was heard June 5, 1867, and the ship fined \$1,000. (Vide treaty.)

G. W. Lake was registered at this consulate September 12, 1860, and Edward Lake September 10, 1862. They were both boys at the time of their arrival. Their occupation has been that of butchers, compradores, and general traders. The latter still resides here, and the former up to the summer of last year (1869), when he left for Yokohama, and thence proceeded to the United States, where he arrived, I suppose, some time in the autumn. So he must have been absent from Topsfield nearly ten years, living all that time, with the exception of the few months spent in the voyages from and back again to America, in a foreign land some 12,000 miles away.

I beg to place these facts together with the court records by the side of the letter of the "selectmen" of Topsfield, who so confidently vouch for the good character of George W. Lake, they "having known him from his earliest days."

I have the honor to be, sir, your most obedient servant,

WILLIE P. MANGUM,  
*United States Consul.*

Hon. J. C. B. DAVIS,  
*Acting Secretary of State, Washington.*

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[Inclosure No. 29.]

DEPARTMENT OF STATE,  
*Washington, September, 3, 1870.*

SIR: Referring to the letter addressed to you from this Department on May 20 ultimo, I have the honor now to inclose a copy of a dispatch, No. 15, dated July 7 last, from the United States consul at Nagasaki, Japan, and of its inclosures, in reply to the charges preferred against him by G. W. Lake, and by you laid before this Department.

I have the honor to be, sir, your obedient servant,

J. C. B. DAVIS,  
*Acting Secretary.*

Hon. BENJ. F. BUTLER,  
*Lowell, Mass.*

List of inclosures: Dispatch No. 51, dated July 7, 1870, from the United States consul at Nagasaki, Japan.

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[Inclosure No. 30.]

COPY OF EVIDENCE.

W. P. Mangum, called and sworn, testifies as follows:

I am United States consul at Nagasaki. Have been acting as such since September 27, 1865. During 1867 and to the 19th of April, 1868, I was in Shanghai, acting United States vice-consul-general, leaving Mr. Moore in charge of the Nagasaki consulate as vice-consul. In 1869 I was acting as consul at Nagasaki. Mr. Dent was acting marshal. I know defendant. He then resided there. He was registered there, I think, in September, 1860, and resided there until in July, 1869, when he visited the United States, as I understood. He was again there last spring. His house is there, G. W. Lake & Co., and has been constantly going on, and that place is in fact his residence.

United States citizens register only once. I am not aware of the existence of a regulation requiring yearly registration of citizens. Mr. G. W. Lake never registered but once in my consulate, and that was in 1860. The agreement between the plaintiff and R. J. McCaslin to arbitrate certain matters about a flour mill was entered into, I think, in April, 1869. Witness produces the original agreement to submit to arbitration, which is read to the court, dated April 7, 1869. (Copy offered in evidence, marked Exhibit No. 1.) That paper is one of my consular archives. This was not executed in duplicate. I do not recollect the date of my order directing the arbitrators to temporarily suspend their action as stated in my answer. I simply wrote a note directed to the gentleman selected as umpire, requesting him to hold in abeyance a decision until certain matters should be settled relative to this flour mill. This was equivalent to an order. He was a British subject. I had no personal jurisdiction over him, but he acted under it. I did this to save the forms of going through the British court with an application. I had no interview with him personally about the subject; he acted under it and refrained from giving an award. There was a case then pending between Adrian & Co., represented by Mr. Schiff and Mr. Lake, relative to a flour mill. I am not positive whether this suit had then been actually commenced or only mentioned to me as to be commenced. I now state positively that that order was made after this action was commenced; I feel certain that it was; the defendant's answer in that action was filed May 8, 1869; the case was tried May 12; the petition was filed 26th April, 1869. This order was made at the application of Mr. Schiff, but there was no memorandum made in the court record book. This order was given on the fact that Messrs. Adrian & Co. reported to me that the plaintiff had refused to carry out his agreement in regard to the flour mill that was in dispute, and this order was given to withhold the suit until the award should be given in regard to the dispute between Mr. Lake and Mr. Schiff. This order was conditional until this difficulty should be satisfactorily settled by the umpire, the arbitrators having disagreed. There was a flour mill on the premises of the plaintiff at Nagasaki owned by Mr. Lake and R. J. McCaslin. The flour mill was purchased in Shanghai from R. J. McCaslin and brought to Nagasaki; at that time an agreement had been made between Lake and McCaslin with regard to their respective interests in this mill. Some time after the mill had been erected and working on Mr. Lake's lot a dispute arose between Lake and McCaslin in regard to it, and, finding that the arrangement was not a paying one, it was settled by McCaslin, as part owner, entering into an agreement with Adrian & Co. to sell this mill for \$5,500, which agreement was acceded to by Mr. Lake himself. The flour mill was to be removed by Adrian & Co. and delivered to the purchasers, who were Japanese, at Osaka, it being understood that the purchase money was not to be paid until the mill was delivered at Osaka, when the money was to be remitted to Nagasaki by Adrian & Co. While Adrian & Co. were proceeding to remove the mill, the plaintiff in this action interfered to prevent it, and, in consequence, Messrs. Adrian & Co. commenced a suit. After that arrangement had been entered into to sell the mill for \$5,500 this agreement to settle their differences by arbitration was made, they having lost the original written agreement made. The matter under arbitration was what portion of the purchase money should belong respectively to Lake and McCaslin. The action at law was to compel Mr. Lake to carry out the agreement made for the sale of the mill by Adrian & Co. to the Japanese. The order was made to the arbitrators to defer any decision as to the relative shares of the purchase money until the agreement for the removal and sale of the mill was carried out and the money realized. (Plaintiff offers in evidence written petition, with its indorsements by Adrian & Co., on which the cause was founded, Exhibit No. 2.) Agreement No. 1 was left in my office for safe-keeping the day of the date. I considered the arbitration to be under my direction, and consider that it was so understood by the parties. The order to the umpire to suspend proceedings is not noted in my court record book. (Witness read letter dated November 1, from his consular letter book, which plaintiff filed, Exhibit No. 3.) Counsel for plaintiff calls attention to the fact that there appears to be an alteration in the original numbers of the letters in the book; witness stated, miscellaneous letters are copied in one book, and departmental ones in another. (Counsel for plaintiff read letter No. 18, Exhibit No. 4; this is the order to the umpire to suspend proceedings already referred to.) Fogg & Co. claimed that they owned one-third of the mill, and on this application the order was founded in connection with what has been already stated. No application for this order was made to me in writing, to the best of my memory. I considered that I had authority to issue this order, without formal application in writing, in the form in which I did it, the object being to facilitate the settlement of the dispute and protect the rights of all parties. The parties had been before me with reference

to the arbitration, and I, in my capacity as consul, was endeavoring to arrange the difficulty between them. I consider that I have a right as consul to issue an order such as the one referred to. I consider that my position as consul, and the general powers given me as such, authorize me to give such order, but I can not point to any specific instruction to that effect, excepting the one instructing me to use my influence to have difficulties settled out of court, if possible, in an amicable manner to prevent litigation. I have already stated that no formal written application was made to me for this order, to the best of my memory. Exhibit No. 3 shows that I had received a letter from Mr. Twombly, which is still on the files in the office. By the term "withholding the award" I intended to postpone the award until this dispute between Adrian & Co. and Mr. Lake was settled, and until Mr. Twombly's claim was investigated.

I do not recollect the date at which the mill was sold by McCaslin. Mr. McCaslin informed me that he had sold the mill, and Mr. Lake afterwards told me he had assented to it; I do not recollect when Mr. Lake told me he had assented to the sale. Mr. Lake assented to this sale verbally, in my presence, and when the mill was being removed he came to me and said he thought they were trying to get the better of him. I told him that his interests could not be jeopardized under the circumstances; that he was dealing with an honorable house, and with a gentleman who I was sure would not, under any circumstances, take advantage of him; but that as he seemed to feel uneasy about the matter I would send my marshal to the mill to tell the persons who were in charge of the removal of it to stop for the present until his mind should be satisfied in regard to it, and advised him to go immediately to Mr. Schiff, the head of Adrian & Co., and come to some definite, satisfactory arrangement about it. He was satisfied with this. I sent the marshal immediately to stop the removal, and Mr. Lake went immediately to Mr. Schiff.

The marshal went to the agent of Mr. Schiff, who was removing the mill, and told him from me to proceed no further with the removal until he should hear further from me, and he stopped. Mr. Lake in the meantime proceeded to Mr. Schiff and made an arrangement with him, and after the interview he returned to my office and expressed himself perfectly satisfied that the mill should be removed; that he had assurances from Mr. Schiff, of Adrian & Co., which were satisfactory to him. I then had the agent who was in charge of the removal of the mill informed that he could continue removing it, which he commenced to do. Either the next day or the day afterward Mr. Lake took another suspicion in his mind that something was wrong, took the key of the mill away from the person who was in charge of the removal without consulting me at all, and declined to have the removal continue. I was informed of this by Adrian & Co., and told Mr. Lake that he had done wrong in stopping the removal, and that he laid himself open to an action for damages for the illegal course he was pursuing. He persistently continued in the same course, and then Mr. Schiff commenced the suit. (Witness produced and read a letter dated 15th April, 1869, from Adrian & Co. to G. W. Lake & Co., given to him in evidence in the suit, *Adrian v. Lake*, which is filed as Exhibit No. 5.) I recollect distinctly the circumstances of the conversation with Mr. Lake. I think the conversation took place in the forenoon. I do not recollect the time distinctly, but think both conversations took place during the forenoon. I do not recollect whether I sent the order November 17, directly after this interview. I do not recollect whether I sent the same day or not. I presume that I informed Mr. Lake that I was going to stop the arbitration, but I do not recollect; I do not recollect that I said anything to suggest to him that the arbitration would be stopped. I had not then issued the order. That's my impression. I think that the first knowledge I had of any of these disputes was in April and May, 1869. I had not the slightest pecuniary interest in the mill, nor in anything connected with it. The letter of Mr. Twombly, already referred to, was the first knowledge I had of the dispute, but Mr. Twombly may have spoken to me before, but it must have been a very short time before, either the same day or the preceding one. The application was made by Mr. Twombly on account of his firm, H. Fogg & Co., I believe. I do not know the names of the partners in that firm. I do not recollect of any previous business with Mr. Lake about the mill, but he may have consulted me previously, and in fact I believe that I suggested to Mr. Lake to settle the disputes by arbitration. (Plaintiff produces a letter dated November 25, 1868, No. 146, from witness to G. W. Lake, which is filed as Exhibit No. 4.) I do not recollect whether the Mr. Fobes referred to in the letter was at that time in business as a merchant in Nagasaki for himself or acting as agent for Fogg & Co., or he may have been acting as attorney for McCaslin; I do not recollect; I do not recollect whether Mr. Fobes, either as agent for anybody or for himself, ever informed me that he had a claim on the mill, but it is evident by the letter produced that he must have done so.

In writing November 6 I may have referred to Fogg & Co. or McCaslin. I believe that Fogg & Co. were interested in that mill as part owners, and I hold the letter in which Lake stated to McCaslin that he admitted that Fogg's claim was "no good," as he expressed it, except for one-third. (Letter produced by witness from G. W. Lake to R. J. McCaslin, dated 27th July, 1869.) I do not recollect whether this was the first I knew of Fogg & Co.'s claim, or whether Fobes acted for Twombly or not. Mr. McCaslin was a resident of Shanghai, and only visited Nagasaki occasionally. I do not recollect what effect was produced by my order, nor do I remember the case until it was brought before me in the following spring. This order was issued by me in my capacity of consul. I have not the slightest recollection of anything that took place in this matter until it was renewed in the following spring. I do not recollect whether the parties referred to in the letter were informed of anything afterwards. I had reasons to believe that Mr. Lake was a part owner of the mill, and in possession of it. The final award of the arbitrators is dated 27th May, 1869. Witness produced the original award, which is filed as Exhibit No. 7, signed by the two arbitrators, and not by the umpire, and explained as follows: That the original agreement between Lake and McCaslin having been discovered during the award, witness suggested to the two original arbitrators that they should take said agreement for their basis, when there appeared to be no difficulty in deciding the matter. The arbitrators did this and concurred in the award produced. This award was filed in my consulate. I had instructed them to do so, and I purposed seeing the award duly executed.

As soon as the award was made known to me, and when the money was paid, I directed the sum of \$2,974.47 to be paid to Mr. Lake, and the balance to be retained until he heard further from me, pending the adjustment of Messrs. Fogg & Co.'s claim, which had been at that time filed in the consulate. The balance referred to is the balance referred to in the award. The date of the order to Mr. Schiff was about the 15th July, 1869, on which date the money was received in Nagasaki, as informed by Mr. Schiff. The money was retained for some months, and was paid in accordance with the award subject to the payment of a sum of money by Lake to Fogg & Co., which had been found to be due to them by agreement between Lake & Co. and themselves, according to my advice, to settle the money out of court. (Witness produced the claim filed by Messrs. Fogg & Co. against the mill.) I received this claim from Messrs. Fogg & Co. The claim produced is filed as Exhibit No. 8. This claim was never adjudicated upon. I do not recollect on what day I received it, but it must have been some time after the trial of the other action. I have not on file a copy of the order to Adrian & Co., stopping the money provisionally. As Mr. Schiff was consul for Denmark, I did not address him an official order, but merely wrote him a request, as from one colleague to another, to retain the money until he heard further from me. (Witness produced consular record book, page 352, and reads: "Judgment pronounced in the case of Adrian & Co. Lake, for \$400. Special performance of the contract and costs, \$84.55; filed as Exhibit No. 9.") This judgment has been satisfied, but there is no record of the same otherwise than the statement in the book. The sums were paid by Mr. Lake. The portion of the judgment as to giving up the keys was not complied with by Mr. Lake, neither were the amounts adjudged paid by him, to the best of my recollection, until after he had been imprisoned for contempt of court. The judgment was delivered in the presence of Mr. Lake, and he was verbally ordered to comply with it, but no decree or writ was issued in pursuance of it. I was made acquainted that the judgment had not been complied with by an affidavit of Adrian & Co. This affidavit is in the record of part of the proceedings against Mr. Lake for contempt of court. Mr. Lake, in addition to the sums for which the judgment was given, was afterwards fined \$50 each in two cases of contempt of court, the costs in each case amounting to \$15; total, \$65 in each case. Mr. Schiff called on me to consult me and I told him that if Mr. Lake persistently refused to carry out the contract the only way to compel him to do so was by a suit in court. And I also wrote to Mr. Lake warning him that he was laying himself open to an action for damages. I have no copy of the contract referred to, as I believe that it was more verbal than written. (Witness produced copy of a letter written by R. J. McCaslin to G. W. Lake and signed by Adrian & Co., filed as Exhibit No. 10.) This letter was the one to which Mr. Lake expressed his assent in my presence, and on which assent they commenced to remove the mill. This and Exhibit No. 5 are, I believe, the only written evidences of the agreement as to the sale of the mill. (Plaintiff produced letter from Mr. Mangum to Mr. Lake directing him not to interfere in stopping the removal of the mill, dated 17th April, 1869, filed as Exhibit No. 11.)

To the court: I ask for production of the letter from Mr. G. W. Lake to Mr. McCaslin, dated 27th July, 1869, admitting the indebtedness to Fogg & Co. (Exhibit No. 12.) There were to be two arbitrators chosen on the award, and in the

event of their disagreement an umpire was to be appointed. This umpire had been chosen on the original disagreement. The umpire complied with my instructions, and did not render any decision. Subsequently the original written agreement was discovered, and the arbitrators then proceeded to an award, which they did without any difficulty, and which has been produced. The umpire chosen never rendered any decision that I heard of. There was not any mortgage or lien registered in the consulate except as to the supposed owners.

Johannes Bruinier, called and sworn, testifies as follows:

I recollect this case, in which I agreed to act with Mr. Smith as abitrator in the dispute between Mr. Lake and Mr. McCaslin. The umpire chosen was Mr. John Maltby. I can not recollect the day on which we found that we could not agree, but it was shortly after we were appointed. I do not recollect the amount of difference between our opinions as to what each party ought to have. The two arbitrators and the umpire never met together to confer. The principal differences were caused by Mr. Lake claiming interest, godown rent, etc., to which I would not give in. After the difference the umpire did nothing, as he was requested by Mr. Mangum not to proceed further, as Fogg & Co.'s claim was put in. I do not know that he did anything to defendant. The amount first proposed to be awarded by the witness was the same as that finally agreed upon. After seeing the original agreement the other arbitrator agreed to this first proposal. There was no difficulty in coming to an agreement after Captain Smith saw the original agreement.

JOHS. BRUINIER.

Herman Schiff, called and sworn, testifies as follows:

The first that happened was that Mr. McCaslin sold me the mill which was put up in the compound of Lake & Co. When I sent round to show the mill to the Japanese—Lake always gave the keys to let me show the mill to the Japanese—when we had settled the bargain I sent an engineer to the place where the mill was, to have the pieces of the engine numbered before they were taken away, and at the same time engaged a ship to carry the machinery to its place of destination.

When the engineer commenced to take down the engine he was stopped by Mr. Lake from further taking down the machinery, and I went to Mr. Mangum, his consul, to complain about it. Mr. Mangum told me at that time that he would send for Mr. Lake, to advise him to let me take away the machinery without further delay. After several days, not being able to go on with the work of taking down the mill, I sued Lake in the American consulate for damages and for nonfulfillment of agreement. Mr. Lake expressed himself perfectly satisfied with agreement made between McCaslin and myself for the sale of the mill, gave his consent to its removal, and said he would go and see Mr. Mangum about it, and so expressed himself in my presence. He gave up the key to my agent, in pursuance of this agreement, and my agent commenced to remove the mill. I do not recollect how many days intervened between his expressing himself satisfied with my statement and the stoppage of the removal of the mill. The machine was to be delivered over at Osaka before the money was to be paid and remitted to Nagasaki.

H. SCHIFF.

The court stands adjourned until Friday, the 15th instant, at 10 o'clock p. m.

#### *Action No. 2.*

The court, on motion of plaintiff's counsel and the consent of defendant, ordered that all evidence adduced on the previous trial be considered as applicable to the present one so far as it may be of use or desired by the parties.

W. P. Mangum, called and sworn, testifies as follows:

I saw the original agreement between the parties upon which the award was afterwards decided. [Witness produces the original agreement between G. W. Lake & Co. and R. J. McCaslin, filed as Exhibit No. 13, not dated, but acknowledged by both parties.] This contract was not known of or produced in evidence in the trial of *Adrian v. Lake*. When the arbitration was signed before me the parties stated that the original contract could not be found. I do not recollect when Mr. Lake placed his accounts in my hands, but they were all handed to me. I do not recollect whether it was before or after Fogg & Co.'s claims. I have no evidence by which I can tell why Fogg & Co.'s claim made a stronger remembrance on me than Mr. Lake's. I can not say why, but I think it was about the time of the dispute about the mill that Fogg & Co.'s papers came before me, and therefore they made a stronger impression on my mind. I suppose Mr. Lake

handed the accounts to me to show how they stood. I presume he came to consult me in regard to the matter. [These accounts of G. W. Lake & Co., with respect to the flour mill, were produced by witness and filed as Exhibit No. 14.] My advice to Mr. Lake, after he put his claims in my hands, always was to settle the matter amicably by arbitration, as without the original agreement I could not understand what were his and McCaslin's respective claims. I wrote the letter of November, 1868, because Mr. Fobes informed me that other parties had claims on the mill, and it was done to protect their interests, as Mr. Fobes said that Mr. Lake was going to sell the mill. My sole object in writing the letter and stopping the arbitration was to protect the claims of third parties whom Mr. Fobes represented as having an interest in the mill. I have not Mr. Fobes's letter here; it is on file at the consulate. [Counsel for plaintiff produces copy of letter from G. W. Lake to W. P. Mangum, dated 16th April, 1869, filed as Exhibit No. 15.] I do not recollect replying to that letter. [Witness produces answer of Mr. Lake in suit of Adrian v. Lake, filed as Exhibit No. 16.] I was in my office daily, and when I was out my marshal was generally there. The indorsement of the date of filing is in Mr. Dent's writing. I saw it on the day that I had ordered him to file it, but it was not then filed. He brought the answer to me, and I read it and told him that it was not a proper answer and that he had many things in it which were improper in an answer, and I told him that it would put it in better shape to bring them in his statement. I told him that, as he had appeared with his answer, he had saved himself from default, and that I would extend the time, to enable him to put his answer in proper form. He then left me, and he said he would do so, and I supposed he went away for that purpose. He did not, however, do so. After a few days he brought it back again in the same shape. I again explained the matter to him, and repeated my advice. But the third time he returned with it, and said he could not do it any better, and I told him that as he could get no one to help him to take my advice and put it in better form, I would file it, and did so. After having this first conversation with Mr. Lake, he expressed himself satisfied and went away. He offered to make his oath to the answer when he came first. The conversation was not a long one, but was earnest on my part, as I meant what I said. I do not recollect saying a word to him about giving up the key, but spoke simply about the answer. I can't say, but I don't think it probable that I did so. [Witness produces order of W. P. Mangum on Lake to file an answer in Adrian's case, filed as Exhibit No. 17. Plaintiff offers letter from G. W. Lake to W. P. Mangum, dated 7th May, 1869, filed as Exhibit No. 18.] I do not recollect that I made any special effort to settle the suit out of court after the petition was filed, as I found that he would not listen to reason.

I had explained the matter before this, but he would not take my advice, but persisted in his headstrong course. I did not order him out of the office when he filed his answer, but when he brought me the letter. This letter was in answer to my note. I think he brought it the day it was written, and the answer was filed the next day. I think he did not leave the answer when he brought the letter. I can not swear that it was filed on the 8th, but I believe it was, irrespective of the date. I think the letter and answer were not delivered at the same time. I only ordered Mr. Lake out of the office when he attempted to force the letter upon me, and my impression is that it was the day before the answer was filed. Mr. Lake did not, to the best of my recollection, offer to pay the judgment in the Adrian case if I would allow the arbitration to go on, nor plead with me to that effect. I have no recollection of his pushing the matter of allowing the arbitration to proceed specially at any time. I have no memorandum of the date when the judgment was satisfied, and I do not recollect when it was paid. Unless the marshal knows, I do not know anyone who could furnish that date. I think it was after the imprisonment. I think it was after the imprisonment, as he only agreed to part of the judgment and refused to satisfy the rest of it. [Witness produces the writ of commitment by which he was imprisoned, filed as Exhibit No. 19.] He was ordered to obey the judgment of the court; that was the order. Mr. Lake did not, to the best of my recollection, tender me the keys of the mill in court. I do not think he offered me the keys if I would give him a receipt for them. The judgment was to deliver to Adrian & Co., or whoever they might send for them. Mr. Lake was informed by other means than the judgment to whom to deliver the keys, as, when he was first arraigned before me for contempt, I told him that Messrs. Adrian & Co. were the persons who would demand the keys from him. Previous to that Mr. Lake was only informed by the judgment itself. Mr. Lake was brought before me by an attachment to the marshal to bring him before my court. [Witness produces writ of attachment on Mr. Lake for contempt, Exhibit No. 20.] I recollect perfectly the circumstances of that day. [Witness produces copy of court docket containing proceedings of the

arraignment for contempt, Exhibit No. 21, and original affidavit of Ferdinand Plate informing him that Mr. Lake had refused to comply with the order of the court, Exhibit No. 22.] The money for the satisfaction of the judgment was paid into court to the marshal. These papers are the complete record of the commitment. No testimony was offered or taken on either side except that affidavit. After this, Mr. Lake was sent to jail for twenty-four hours, and the fine collected. Mr. Plate went to him again and demanded the keys, and Mr. Lake swore that he would not give them up, and the same proceedings were again gone through and Mr. Lake committed a second time. I then issued a search warrant, and put it in the hands of the marshal to find the key, but he could not do so, and he went to Mr. Lake in prison and asked him where it was. The marshal brought me the key, and I handed it over to Messrs. Adrian & Co. The second proceedings for contempt were precisely similar to those in the first case. [Witness produces search warrant, filed as Exhibit No. 23.] The record order of commitment is dated 15th May, 1869. The first time I ever saw the key was when it was brought to me by Mr. Dent under the search warrant, but on reflection I think he did not give the key to me, but handed it to Mr. Plate. We had no special code of proceedings at that time, but we followed the rules and regulations of the State Department, and also the code of rules adopted in China. Under these rules I think that a plaintiff who recovered judgment could get execution in twenty-four hours, or by 3 o'clock next day. I think that rule is in the code of rules for China. [Burlingame's rules.] There was no execution sued out on that judgment. When the judgment directed a specific act to be performed I should say that if no execution issued an order committing him for contempt of court was the proper mode. The record book produced is a full record of the proceedings in my court before the new regulations were adopted. I have read the decrees published by the commissioners for China. I have taken the oath required by those regulations. It is filed in the court. It was administered by Mr. Walsh. I never received the protest of plaintiff produced, but Mr. G. W. Lake applied in court for an appeal, but I explained to him that, as the assessors unanimously agreed with the court, under the law there was no appeal. I have a slight recollection since reading the above that Edward Lake did say something to me about delivering up the keys, but I am not positive. [Counsel for plaintiff produces letter from G. W. Lake to W. P. Mangum, dated 15th June, 1869, Exhibit No. 24.] After reading Mr. Plate's affidavit to Mr. Lake I told him that I should decline to hear him, but should commit him on those grounds. I refused, when Mr. Lake acknowledged refusing to give up the keys, to hear anything further from him, but committed him for contempt of court.

Plaintiff's counsel now offers to prove, by this witness and others, the particulars of the making the order of deportation and those of a certain suit brought against Mr. Lake for bastardy, all being of recent date, several months posterior to the proceedings for imprisoning Mr. Lake for contempt, for the purpose of proving malice on defendant Mangum's part when conducting these contempt proceedings.

The court holds that evidence of malice existing at a subsequent period of time must of a consequence be secondary and of the fullest nature to establish malice at a prior date, and in the judgment of the court can only be allowed as corroborative testimony in support of direct and positive evidence in proof of malice existing at such prior date. There being no such primary or positive evidence in this case, the court holds the evidence offered to be inadmissible for any purpose.

Defendant excepts.

To the court: Mr. Lake was present when the judgment in Adrian's case was given, and I read the verdict to him in open court and directed him to obey it.

Lewis M. Dent, called and sworn, testifies as follows:

I recollect the fact of going to the mill with Mr. Lake to stop the work, but not the date. I went to stop the work of taking the mill away. I went by Mr. Mangum's order to do so. I found that Mr. Wignall was in charge of the place and found him there. I told Mr. Wignall that Mr. Mangum had sent me to him to request him to stop the shipment of the mill for the time being. Mr. Wignall gave me the key and I locked the door and gave the key to Mr. Lake. I think I was not in the consulate when Mr. Lake came to file his answer. I do not recollect being there. I arrested Mr. Lake under these warrants. I do not recollect the date, but I remember arresting him. I went to his house and read the warrant to him. He went with me to the consulate and the consul read to him the documents on which he arraigned him, viz. his disobedience to the verdict, and committed him to jail, giving me a warrant to do so. That is all I recollect that occurred. Mr. Lake did not offer to give up the key to the consul on his giving him a receipt

for it, to the best of my recollection; but he refused several times, in my presence, to give up the mill. I can not say whether this was at the consulate. I arrested him twice. (Counsel for plaintiff produces the witness' receipts, filed as Exhibits Nos. 25, 26, and 27, for moneys received from Edward Lake.) I was present at the trial of Adrian *v.* Lake. Mr. Lake was not, to my knowledge, ordered out of the court room during the trial; nor was he, to my knowledge, ordered out before the trial. I think I was not present when the answer was brought to the consulate to be filed. I was out at the time, and on my return Mr. Mangum gave it to me to file. I never saw any difficulty or high words between Mr. Lake and Mr. Mangum about this time. I do not know of any. The prison in which Mr. Lake was placed was about 8 feet by 5 feet and about 6 feet in height, as near as I can recollect. For a Japanese jail it was cleanly and comfortable, being for Europeans, and not the same as the Japanese prisoners were placed in.

To defendant: Mr. Lake once said in my presence to Captain Williams in his own house that he "knew that he was wrong and foolish about this; but he would see it through, and Ned [his brother] wanted to see it through." He said it good temperedly. I never saw anything wrong in Mr. Mangum's conduct to Mr. Lake. I never saw you act otherwise than kindly to him, when he came about his difficulties to the consulate, but I have heard very little, as he always went into your room.

Counsel for plaintiff handed in to the court a memorandum of his authorities on the legal question.

Action No. 3, called for trial, is submitted upon the introduction of a copy of the dispatch written by W. P. Mangum to the Assistant Secretary of State of the United States (filed as Exhibit No. 28) and copy of letter from the Assistant Secretary of State to Benjamin F. Butler and other persons, with indorsements (filed as Exhibit No. 29).

The court stands adjourned until Tuesday morning, the 19th instant, at 10 o'clock a. m.

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[Inclosure No. 33.]

In the ministerial court of the United States for Japan.

GEORGE WILKINS LAKE, PLAINTIFF, /  
*v.* / Action for damages. Demand, \$5,000.  
 WILLIE P. MANGUM, DEFENDANT. }

To His Excellency CHARLES E. DE LONG,  
*Envoy Extraordinary and Minister Plenipotentiary*  
*for the United States in Japan:*

The plaintiff above named, George Wilkins Lake, by G. W. Hill, his counsel and attorney, respectfully gives notice that he will appeal from the judgment rendered in the above-entitled action on the 19th day of December, A. D. 1871, to the United States circuit court for the district of California, and the plaintiff prays that thirty days be allowed to him in which to perfect such appeal, and that execution and all proceedings herein be meanwhile stayed.

G. W. HILL, Plaintiff's Counsel.

YOKOHAMA, December 20, 1871.

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*Mr. De Long to Mr. Fish.*

No. 223.]

UNITED STATES LEGATION,  
 Yokohama, Japan, July 17, 1871.

SIR: I beg leave to advise you of the receipt by me a few days since of a note from Willie P. Mangum, esq., United States consul at Nagasaki (inclosure No. 1), informing me of the receipt by him of a letter of complaint made by the governor of Nagasaki against one G. W. Lake, esq. (inclosure No. 2), demanding that said G. W. Lake, on account of his several previous convictions of crimes in the consular court at Nagasaki, should be compelled to leave the Empire, in pursuance of the provisions of article 7 of the treaty between Japan and the United States; also inclosing and calling Mr. Mangum's attention to the complaint made against said Lake by a Japanese woman, asking a judgment for the value of her services, performed for Mr. Lake during a period of years as a domestic servant, and for an allowance to support a bastard child of said Lake's, born to him by her during the

same period, which statement of the woman was connected with an affirmatory statement by the master of the village where the woman resides (inclosure No. 3).

With the same note Mr. Mangum also inclosed to me a copy of an official letter addressed by him to Mr. G. W. Lake (inclosure No. 4), in which he notified him of the complaints and demands, and directed him to answer thereto, and leave the Empire of Japan within three months from the date of his letter (July 7, 1871); or, otherwise, advising him that if he remained in Japan after that time he would not be accorded any protection by the American authorities in the country.

This communication I replied to on yesterday, in part affirming Mr. Mangum's proceeding, and pointing out to him a proper course of practice to govern his action in similar cases in the future (inclosure No. 5).

I trust that in my instructions to him I have announced such rules as will meet with your kind approval.

I am, etc.,

C. E. DE LONG.

[Inclosures.]

No. 1. Note from W. P. Mangum to C. E. De Long.

No. 2. Note from governor of Nagasaki to W. P. Mangum, esq.

No. 3. Complaint of Japanese woman and village master against Mr. Lake.

No. 4. Letter of Mangum to Lake advising him of these complaints and demands and directing him to leave Japan.

No. 5. Note of instructions from C. E. De Long to Willie P. Mangum, esq.

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[Inclosure No. 1.]

*Mr. Mangum to Mr. De Long.*

CONSULATE OF THE UNITED STATES,

*Nagasaki, July 8, 1871.*

SIR: I have the honor to inform you that I have received a letter from his excellency the governor of Nagasaki, forwarding to me a complaint against G. W. Lake, made by a Japanese woman residing at Nagasaki, named Toka, requesting me to have the matter investigated and justice done in the premises, and that his excellency, in forwarding this complaint, refers to the past career of said G. W. Lake at Nagasaki, and, calling attention to the fact that under the seventh article of the treaty he has forfeited his right of residence in Japan, requests that this provision of the treaty be enforced against him.

I inclose a copy of the petition of said Toka, which fully explains her case, marked inclosure A. and a copy of the governor's letter, marked inclosure B.

I have notified the said G. W. Lake of the complaint, and to appear at an early day at Nagasaki, in order that the matter may be investigated; but as he is at present at Yokohama, out of my jurisdiction, so that I can not serve a summons on him in the usual form, I will thank you to take such other steps as you may deem proper and requisite to compel his appearance. And, in compliance with the requisition of the governor, I have also informed him that he has forfeited his right to go more than one Japanese ri inland from his place of residence, which is at Nagasaki, and his right to reside in Japan, and that he must leave the country, allowing him three months from the date of my letter to him, July 7, 1871, to settle his affairs.

I inclose a copy of my letter to the said G. W. Lake, marked inclosure C, and beg that you will issue the necessary instructions to have the aforesaid article of the treaty enforced at the other open ports in this case.

I have, etc.,

WILLIE P. MANGUM.

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[Inclosure No. 2.]

NAGASAKI, 19th 5th Month, 4th year Meiji.

SIR: Herewith inclosed I beg to forward to you two petitions, with the translation, in which a woman, named Toka (who was the prostitute under the employ of Matzumuraya Izunejiro, in this town, and known formerly by the name of Takashino) complains of the action of Mr. G. W. Lake, by whom she was kept eleven years, as if she was his wife, and by whom she has one living child. His

action appears to be most cruel and odious, and this concerns to the vicissitudes of said Toka and her child, which I can not lay aside. I therefore beg to request you to have investigated the matter at once, and inform me the result.

Mr. G. W. Lake often behaved violently during his stay in this port, and he has several times been ordered before your consular court for his bad conduct, and convicted and punished according to the laws of your country, by being fined and confined in the jail of the foreign office. As he is so wicked it is unknown what serious consequences may be caused by him in the future, which gives trouble to both sides.

I therefore must request you to have him sent back to his country as soon as the complaint of said Toka has been investigated and justice done, for he has lost his right to live in Japan according the treaty, which says, in the Article VII, that "Americans who have been convicted of felony, or twice convicted of misdemeanors, shall not go more than one Japanese ri inland from the places of their respective residences, and all persons so convicted shall lose their right of permanent residence in Japan, and the Japanese authorities may require them to leave the country." I therefore again request you that this article of the treaty be put in force against Mr. G. W. Lake.

With compliments,

MAYAGAWA TUSAYUKI,  
*Gen Chiji of Nagasaki.*

UNITED STATES CONSULATE,  
*Nagasaki, July 7, 1871.*

The above and foregoing is a true copy of the original translation of the letter of the governor of Nagasaki, on file in this office.

{ UNITED STATES  
{ CONSULAR SEAL. }

WILLIE P. MANGUM,  
*United States Consul.*

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[Inclosure No. 3.]

*To the United States Consul, Nagasaki:*

I, the undersigned, have the honor to present the following petition:

I was employed by Mr. G. W. Lake during the eleven years up to the present year, since I was first engaged into his service, when, in the year 1860, he had been discharged from his duty as the doorkeeper of "Ewanaga" (Bungalow of Messrs. Wash Hall & Co.). I lived with him together in the house hired, and took the great pains, in order to spend our days, trying to prevent from the leaking of rain through the roof of the house by covering blankets under the floor, and, at the same time, he commenced to do his business on the cattle and fowls, and could not hire a cooly for supplying grass to the cattle, not having had a single "cash," so I crossed myself daily over to Juasa to take the grass for cattle's feed up to them, and made his continuance on such business, by my discharging the works of man or maid servants during the past six or seven years; he become so rich from time to time as he is at present.

When I spent the days hardly with Mr. G. W. Lake my parents and sisters came and told me many times that it is better for me to separate from him, because my long servitude to the man, whose business consists of butchery, should not bring me to a happy future, but thinking that it was not right to do so, I was joining to Mr. G. W. Lake, concealing myself from the eyes of others.

I was waiting that Mr. G. W. Lake, who proceeded to Yokohama on his business in the year 1869, would return to this port in some days, but he who left them directly for his native country and did not communicate with me for about two years, in the affecting manner he has arrived at his house in Oura this time.

During his absence from this port his brother and Jim, a clerk, residing at his house, were very unkind to me, and gave nothing in order to support myself and child, too, so I was obliged for two years to pass my days in the houses of my friends, in the same street of this town, and sisters for every half month, and then in the house of some foreigners, or in selling my clothes and in borrowing some money from any others, for which I was very much distressed during these two years.

Mr. G. W. Lake told me that he intended this time to send for his wife he married with at his native country, of which I was learned of already, and that he will separate from me, for my living with him makes his wife disagreeable on her arrival to this port, which I thought to be just for him and complied with such proposals made by him, because the woman's feelings are of the same, generally,

in the world. I inquired to him what shall he do with the child, and was told that he would separate from me and the child, when I replied to him, "Where shall I go with the child, for I have no house to live in." He said he will hire the carpenter to remove the next house on the next lot, No. 44, belonging to him, and to build up the same again for me in my street of the town; consequently I was satisfied with such proposals of his separation of me and child.

As he has changed his intentions at present, accusing me falsely, that I had a secret lover during his absence, on account of my having lived in the house of the street of the town, I am very sad daily for such disappointment, so I request you earnestly you will understand that when Mr. G. W. Lake formerly left this port for Yokohama and returned to me he suspected for a secret lover, and he ten me many times. It might be very happy for me many times if I gave the child to any man as an adopted son—this child was born seven years ago—I would not be troubled myself so much as I am now. It is certain that Mr. G. W. Lake did not allow me to do so at the time, and I am keeping the child until he is 7 years old.

I can not conceive that Mr. G. W. Lake, who thought at first the child as his own one, and took a great care in rearing him up by having a wet nurse, etc., tells me how many difficulties, saying that the child is not his own one. Having been proposed by Mr. G. W. Lake an excessive harshness for me, changing suddenly his intention, which seems to me to be the advice of his brother and clerk named "J. m." I thought often it would be better for me that I lost my life, but I did not so, having thoughts of the child, and I am now in great distress.

Pray you will be kind enough to make an assistance for me and child, that I shall pass my days with child so easily as possible.

Mr. G. W. Lake told me once that if he married with country woman he shall marry me off to some Japanese, but I believe that I can not immediately marry unto any man, for not only accompanying a child, but I was already 28 years old, instead of being 17 or 18 years old.

On his excessive proposal I am very sad and perplexed at present what to do, while I kept myself strictly during his absence, thinking that I have not the right to marry freely with another, not having separated yet from him.

If you will a good advice to Mr. G. W. Lake, after you considered well the above circumstances, that he will give me and child a suitable assistance, I would be very much thankful and never forget your greatest favor in all my life.

TAKO, *Petitioner.*

I hereby certify that the woman named Tako petitions as is mentioned above.

S. DZUKI HANZAIRO,  
*Village Master of Tanachi.*

UNITED STATES CONSULATE,  
*Nagasaki, July 7, 1871.*

The above and foregoing is a true copy of the original translation received from the governor of Nagasaki.

[UNITED STATES CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul.*

*To the United States Consul, Nagasaki:*

I, the undersigned, have the honor to state you the following as the additional request:

Having removed myself to the next empty house, No. 44, on the 11th instant, and being present visited by two or three foreigners, was requested to resume my engagement for them, because Mr. G. W. Lake married some European lady at his country, and to consent to their own request, adding a conversation of Mr. G. W. Lake with them, that he told them to transfer me any time if I will satisfy with it; but I declined it soon, saying, with anger, that Mr. G. W. Lake is very wrong, and let them have gone away, of which I believe that Mr. G. W. Lake told them truly so and so.

I beg to express you my extreme surprise, that I was much surprised with such a wrong of Mr. G. W. Lake, while he can not complete even my subsistence at all. I, who was 17 years old when engaged for Mr. G. W. Lake, have been registered as first in the list of "kutzwaya," only by the name, but had not quite a reason that I offered myself to the same tea house. Two or three Japanese women have been engaged for Mr. G. W. Lake before I was, but they left from him away, because they were vexed of his much promises, so that none of them could engage herself for Mr. G. W. Lake any longer; so I succeeded to the engagement of the said predecessors for him, while I well understood him to be poor man.

Thereafter Mr. G. W. Lake was dealing the butchery business; but he made no payment for me to the above tea house, "kutzwaya," except 4 boos got from him some time, or 8 boos within two months as my pocket money, with which amount I made the payment for the tea house. At that time Mr. G. W. Lake promised me that he, being unable to make immediate payment for me, will pay the total amount at future years and help me and child better by and by, because he had the child afterward; but I think now it is out of the way; that he failed his last word (meaning that he considered me always just the same as his wife and will marry not with any other woman in his life, and likewise that everything would be shared in two parts if we should oblige to separate from each other, because the mutual industry produced his estate to the richness).

The above child whom I am growing up richness still with my great love is now 7 years old, because I believe him to be my true one since his birth; but Mr. G. W. Lake expressed me his pretext that the above child was made through my lewdly intercourse with some Japanese in town of Nagasaki instead of his true child, while he was no doubt present when the birth of the child took place, of which I observe it, as if he had been prompted by two men (his brother and clerk named Jim) to do such evil, or should have changed his mind for account of his having married some lady. Under these circumstances I have been overwhelmed with a deep sorrow; went on the seaside one or two times for the purpose to commit my suicide by drowning, but this was prevented for the grief of my young child to be left alone from me.

Although I am, of course, a foolish woman and should not be good for Mr. G. W. Lake, yet I was engaged for him during eleven years about. If he persists upon such a pretext, how we can keep our livelihood, and are very hard to do so, though I, being over age, can be allowed to marry with anybody.

I am very angry against his bad conduct, and believe that there is no difference of the humanity between foreigners and Japanese, so it is of my hope that I am at home only with my child expecting his full growth.

If you will put my suspicions upon my declaration, I can prove it with my cutting hair; so I beg to request you will be good enough to understand my excessive sorrow and call Mr. G. W. Lake into your office to explain to him well the contents of my petition.

I beg to add it was some years ago that Mr. G. W. Lake went to his country and came not again to Nagasaki for a long time, when I obliged to be engaged for some foreigners more than one year, because I alone, who have been left in Nagasaki by him and could not eat nor drink. Meanwhile Mr. G. W. Lake came back to Nagasaki and wounded the said foreigner at his great dispute with each other, and this case was laid before Her Britannic Majesty's consul and settled, and I was then in the right to be engaged for the above-wounded foreigner, and requested to Mr. G. W. Lake that I may discharge my engagement for, but he declined it; and after this he told to my parents at Simabara that they may deposit me and child their home during his absence, and pay them truly for the supporting money.

Therefore I beg to repeat my request that you will take a favorable assistance, so that I and child may keep subsistence to the last of our days.

Second month, fourth year Meiji.

TAKO, *Petitioner.*

I hereby certify that the woman named Tako petitions as it mentions above.

SUDZUKI HANZABRO,  
*Village Master of Tanachi.*

UNITED STATES CONSULATE,  
*Nagasaki, July 7, 1871.*

The above and foregoing is a true copy of the original translation received from the governor of Nagasaki.

[UNITED STATES CONSULAR SEAL.]

WILLIE P. MANGUM,  
*United States Consul.*

[Inclosure No. 4.]

No. 52.]

CONSULATE OF THE UNITED STATES,  
*Nagasaki, July 7, 1871.*

SIR: I received yesterday from his excellency the governor of Nagasaki a letter requesting me to investigate a complaint, which he inclosed, made against you by a Japanese woman named Tako, who asserts that she lived with you at Nagasaki for several years as your wife, and has one child now living of which you are the

father; that she labored to assist you in making a living when you were without means, and was instrumental in your success, as she expressed in her petition: "The mutual industry produced his estate to the richness." She also asserts that you have also cast off both herself and child, without adequate means of support, and appeals to the authorities to have justice done to them.

I hereby notify you to appear at Nagasaki at an early day, so that this matter may be investigated. In his letter the governor refers to your past career in Nagasaki, and, calling attention to the fact that under the seventh article of the treaty you have forfeited your right of permanent residence in Japan, requests that the provision of the treaty be enforced against you. Article VII: Americans who may have been convicted of felony or twice convicted of misdemeanors shall not go more than one Japanese ri inland from the place of their respective residence, and all persons so convicted shall lose their right of permanent residence in Japan, and the Japanese authorities require them to leave the country.

Under this clause of the treaty you have clearly forfeited your right to go more than one Japanese ri inland from your place of residence, the same being at Nagasaki, and your right of permanent residence in Japan, and now the Japanese authorities require that you shall leave the country.

In compliance with the requisition of the Japanese authorities, I hereby notify you of this forfeiture, and inform you that you must leave Japan, allowing you three months' time from this date—July 7, 1871—to settle your affairs. If, at the expiration of this allotted period, you shall still remain in the Empire, you will not be accorded any protection by the American authorities in the country.

I am, sir, very respectfully,

WILLIE P. MANGUM,  
*United States Consul.*

GEO. W. LAKE, Esq.

[Inclosure No. 5.]

*Mr. De Long to Mr. Mangum.*

No. 19.]

UNITED STATES LEGATION,  
*Yokohama, Japan, July 16, 1871.*

SIR: I have the honor to acknowledge the receipt of your dispatch (No. 53) of the 8th instant, with its inclosures.

The measures taken by you in regard to Mr. G. W. Lake, in notifying him to leave the country or that he would at the expiration of three months from the date of your notice lose the right to claim any protection from United States officers resident here, seems to be in strict accordance with the instructions upon this subject from the State Department.

I would suggest to you the propriety of advising all of your brother consuls in this Empire of your order; and also in future cases remit such an order to the United States marshal at the port where such convict is to be found, with directions to make personal service of a copy of the order, and return the original to you with his proceedings indorsed thereon in writing. In this way you will insure timely service of your orders and have evidence constantly on file in your office showing when and where the person was served.

In regard to the affair of the Japanese woman's claims against Mr. Lake, I can only say that if she claims wages as a servant or support for her child as being the infant of Mr. Lake she must, in order to bring Mr. Lake into court, commence action by filing complaints in writing, sworn to, setting forth her cause of action or complaint and praying for a judgment for some certain sum of money or other relief, whereupon it will be your duty to issue a summons, under the seal of your court, directed to the defendant, summoning him to appear in such time as is provided by the consular-court regulations. Attach a copy of the summons to a copy of the complaint, and to the original summons attach an order to the United States marshal to whom you send it for service, directing him to make service and return of the writ, as by the regulations for consular courts it is provided. Thus you may have a summons from your court served at any port in the Empire; and in this way only can a defendant be brought into court in a civil action.

Consequently I can not comply with your request by taking any steps to compel Mr. Lake to respond to the application on behalf of the woman forwarded to you by the governor.

I have, etc.,

C. E. DE LONG.

No. 80.]

SIR: I have the honor to transmit herewith original complaints received by me from Mr. G. W. Lake, of Topsfield, Mass., against Mr. Mangum, our consul at Nagasaki, and Mr. D. L. Moore, formerly acting vice-consul at that port.

I inclose letter of acknowledgment to Mr. Lake.

I have, etc.,

C. E. DE LONG.

[SEAL.]                GEORGE WILKINS LAKE  
v.  
WILLIE P. MANGUM, U. S. CONSUL, NAGASAKI, JAPAN.

TO CHARLES DE LONG,  
*United States Minister, Kanagawa, Japan:*

The plaintiff, George W. Lake, represents that the defendant, Willie P. Mangum, consul for the United States of America, did, on the 15th day of April, 1869, stay an arbitration case between G. W. Lake and R. J. McCaslin by a written order to Mr. John Maltby, who was acting as umpire, without notifying either party signing that he intended doing so, thereby consuiving with plaintiff's enemies, who brought suit against plaintiff to make plaintiff deliver over a certain flour mill in dispute, thereby subjecting plaintiff to damages amounting to \$619.55. Besides, defendant did, on the 14th day of May, 1869, refuse plaintiff the right of appeal, and on the 13th of May, 1869, refused to receive into court the key of the property in dispute, and did throw plaintiff into prison on the 13th of May, 1869, for not delivering over the property to Adrian & Co.'s clerk, and refused to allow plaintiff to speak in his defense; also defendant threw plaintiff into prison a second time for the same offense on the 15th day of May, 1869. Defendant also deprived plaintiff of the key of his property under a search warrant while in prison May 15, 1869; also defendant did compel plaintiff's agent, by threats and abuse, to settle the amount awarded by arbitration and sacrifice \$100. Plaintiff petitions the court to compel the defendant to pay and make good these sums mentioned, and to pay the sum of \$5,000 damages, which plaintiff claims he has sustained by the unlawful proceedings of the United States consul at Nagasaki, Japan, by being disgraced by imprisonment in a Japanese prison and injured by the imprisonment and transportation of Capt. E. Tolman, of schooner *Spray*, owned by plaintiff, from Nagasaki, Japan. Plaintiff petitions the court to award any further damages the court may deem just.

GEORGE W. LAKE.

TOPSFIELD, MASS., *May 3, 1870.*

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

MAY 3, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,  
*Justice of the Peace.*

[Revenue stamp.]

COMMONWEALTH OF MASSACHUSETTS, SECRETARY'S OFFICE,  
Boston, May 18, 1870.

I hereby certify that at the date of the attestation hereto annexed Joseph W. Batchelder was a justice of the peace for the county of Essex, in the said Commonwealth, duly commissioned and constituted, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth  
the date first above written.

[SEAL.]

OLIVER WARNER,  
*Secretary of the Commonwealth.*

GEORGE WILKINS LAKE

v.

} Action for damages.

D. L. MOORE, UNITED STATES VICE-CONSUL.

To the Hon. CHARLES DE LONG,

*United States Minister at Kanagawa, Japan:*

The plaintiff, G. W. Lake, respectfully represents that the defendant, D. L. Moore, vice-consul at Nagasaki, Japan, did, on the 26th day of November, 1867, deprive plaintiff of his liberty by issuing an order under the seal of the United States to D. H. Tilson, dated November 26, 1867, on which plaintiff was imprisoned in a Japanese prison for a term of ten days, thereby subjecting plaintiff to heavy damages by loss of credit with the Japanese, and disgrace.

Also, defendant did deny plaintiff the right of an appeal, and also did refuse to accept \$5,000 bonds until the United States minister could be communicated with, on the day the sentence was passed, in and before the court, thereby compelling plaintiff, in order to obtain justice, to defy his power and proceed in person to the United States minister. No redress could be obtained, because no papers came lawfully certified to through the United States consul, which could not be done, as defendant would not allow either time or opportunity. Defendant did, on the 26th day of November, 1867, refuse to receive into court a written document protesting against his proceedings, and did defiantly throw it back to plaintiff. It was again presented to the United States marshal for presentation to the United States consul, after having been certified to by three witnesses.

Plaintiff petitions the court to compel defendant to make good the damages caused by defendant to the amount of \$6,000, and render plaintiff what further compensation the court may deem just.

Very respectfully,

GEORGE W. LAKE.

TOPSFIELD, MASS., May 11, 1870.

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

On this 12th day of May, A. D. 1870, George W. Lake makes oath to the truth of the foregoing statement by him inscribed.

Before me:

CHARLES KIMBALL,  
*Justice of the Peace.*

[Revenue stamp.]

COMMONWEALTH OF MASSACHUSETTS, SECRETARY'S OFFICE,

*Boston, May 18, 1870.*

I hereby certify that at the date of the attestation hereto annexed Charles Kimball was a justice of the peace for the county of Essex, in the said Commonwealth, duly commissioned and constituted; and that to his acts and attestations, as such, full faith and credit are and ought to be given, in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth, the date first above written.

[SEAL.]

OLIVER WARNER,  
*Secretary of the Commonwealth.*

NAGASAKI, November 26, 1867.

DEAR SIR: I, the undersigned, do here, by these presents, solemnly protest against the unlawful proceedings that you have taken to injure me under the name of the law.

First. About the 1st of July I applied to you for redress or some satisfaction or understanding regarding the continual interference of the Japanese in stopping the sundry articles required for shipping, such as bread, etc. Your answer to me that you could not help me or do anything for me, and further you stated that the Japanese had, that morning, me up and complained that I had struck and detained in my house a Japanese officer while in the lawful performance of his duty. You also said that they did not wish to enter a suit against me, and you said that you would write a letter to the governor and apologize. I explained to you the whole difficulty that had taken place the night previous and that I had no witnesses to prove what I had said, or there was no one around at the time but the Japanese boatman, and he ran away and I have not seen him since. As I explained to you, he drew his sword on me or the boatman, and I immediately took it away from him and brought it into the house. He followed me to get it back. I put the sword away in a drawer and requested him to stop in my office until I came back from the custom house, as he would not accompany me. On my return from the custom-house I found him standing in the middle of my office. I deliberately took

hold of him by the arm and handed him back his sword and took him before the superintendent of customs. I had to force him to go, as he would not go, and wanted to run away. As to his statement that I shut the door and locked it, it is false. Even if I did, he could have walked out of the window, as there was two windows broken and the sash also. If you had taken the trouble to ascertain these particulars, which was your duty as consul, besides there was no witnesses against me but what was in my favor and the man's own statement that I did not strike him nor kick him.

How in the name of God can you make out that I deserved ten days' imprisonment and a fine of \$25? The whole affair, from beginning to end, shows that it was through spite and malice on your part, just to injure me. I therefore, here, by this presents, notify you that if you deprive me of my liberty at this present moment, as my brother is sick and not able to attend to his and my business, I shall hold you responsible for damages to the amount of \$5,000, as the full amount provided by law, for every day that I am deprived of my liberty. I am well convinced that you have received in the consulate record what is not true, as I have good and substantial witnesses to prove that you were biased by your friend Robinet, and can bring proof that you have stated, before witnesses, in the Bellevue Hotel, that all you wanted was to get a pretense and you would put Lake through.

From yours, truly and respectfully,

GEORGE W. LAKE.

D. L. MOORE, *United States Vice-Consul.*

This is to certify that we are witnesses to the fact of this paper being given to D. H. Tilson, United States marshal, for presentation to D. L. Moore, esq., United States vice-consul.

A. C. WATTS,  
Z. L. TANNER,  
WM. J. OLIPHANT.

UNITED STATES CONSULATE,  
*Nagasaki, Japan, September 25, 1867.*

Personally appeared before me George W. Lake and acknowledged the signature to the above letter to be his own and swore that said document was in every respect true.

[UNITED STATES CONSULATE SEAL,  
KANAGAWA.]

LEMMUEL LYON,  
*United States Consul.*

UNITED STATES CONSULATE COURT,  
*Nagasaki, November 26, 1867.*

To D. H. TILSON, *United States marshal:*

You are hereby commanded to commit the prisoner, G. W. Lake, to the Japanese jail, to be there held until further instructed by this court: and of this order make due return.

[CONSULATE SEAL,  
NAGASAKI, JAPAN.]

D. L. MOORE,  
*United States Vice-Consul.*

George W. Lake.

COMMONWEALTH OF MASSACHUSETTS, *Dssor, ss:*

On this 12th day of May, A. D. 1870, George W. Lake makes oath to the truth of the foregoing statement by him inscribed. Before me,

CHARLES KIMBALL,  
*Justice of the Peace.*

[Revenue stamp.]

*Mr. De Long to Mr. Lake.*

UNITED STATES LEGATION,  
*Nagasaki, Japan, August 1, 1870.*

Sir: I received your complaint against Mr. Morgan, the United States consul at Nagasaki, and Mr. D. L. Moore, late vice-consul at that port, and I now beg to inform you that those documents have been sent you to the Department of State by this opportunity.

I am, etc.,

C. E. DE LONG.

*Mr. Lake to Mr. Butler.*

TOPSFIELD, MASS., *September 17, 1870.*

SIR: I hereby acknowledge the receipt of W. P. Mangum's letter dated July 7, 1870; also one from the Department of State, with your indorsement.

W. P. Mangum's letter is the most perfidious statement that could possibly be imagined, the principal fact of which is false.

To prove that my statements heretofore stated to you and to the Department of State are true. I hereby request an interview with you, to be questioned and examined in the most thorough manner. Then, if it is shown that I am the villainous character represented by W. P. Mangum, you are at liberty to denounce me as such.

Will you please demand for me, in my name, a copy of the consular record at Nagasaki, Japan, in all cases that have been brought against myself and brother, Edward Lake, especially the one in June 16, 1863, charge of an assault and battery; August 31, 1865, charged with an assault; September 28, 1866, charged against G. W. Lake and Edward Lake; June 10, 1867, charged of unlawfully detaining and wounding a Japanese officer. Also a copy of the contract for the delivery of the flour mill to Adrian & Co., that W. P. Mangum speaks of, which most assuredly cannot be produced, as there never was any contract, either verbal or in writing.

I take the liberty to inform you that Capt. E. Talman, late of the schooner *Spray*, is now in San Francisco, Cal., in the marine hospital. He stated that his sickness was caused by his long imprisonment and neglect while imprisoned in Japan, and has not been able to do a day's work on board of the ship on the passage to San Francisco, as he was sick all the passage.

From, very respectfully,

G. W. LAKE.

Hon. B. F. BUTLER.

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*Mr. Davis to Mr. Lake.*

DEPARTMENT OF STATE,  
*Washington, April 13, 1870.*

SIR: I acknowledge the receipt of a paper transmitted by you under the caption—

GEORGE WILKINS LAKE }  
v. } Action for damages.  
WILLIE P. MANGUM. }

Referring you to the letter from this Department under date of January 7, 1870. I have further to state that this Department possesses no judicial authority to entertain an action at law, or to award damages against a consular officer. Your remedy, if any exists, must be sought in the proper court of law.

I am, sir, your obedient servant,

J. C. B. DAVIS,  
*Assistant Secretary.*

GEORGE WILKINS LAKE, Esq.,  
*Topsfield, Mass.*

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*Mr. Lake to Department of State.*

GEORGE WILKINS LAKE }  
v. } Action for damages.  
WILLIE P. MANGUM. }

*To the Department of State, U. S. A., at Washington, D. C.:*

The plaintiff, G. W. Lake, represents that the defendant, W. P. Mangum, consul for the United States of America, did, on the 15th day of April, 1869, stay an arbitration case between G. W. Lake and R. J. McCaslin by a written order to Mr. John Maltby, who was acting as umpire, without notifying either party signing that he intended doing so, thereby conniving with plaintiff's enemies, who brought suit against plaintiff to make plaintiff deliver over a certain flour mill in dispute, thereby subjecting plaintiff to damages and fines amounting to \$319.55; besides, defendant did, on the 12th day of May, 1869, refuse plaintiff the right of an appeal; and, on the 13th of May, 1869, refused to receive into court the key of the property in dispute, and did throw plaintiff into prison on the 13th of May, 1869, for not delivering over the property to Adrian & Co.'s clerk, and refused to allow

plaintiff to speak in his defense: also, defendant threw plaintiff into prison a second time for the same offense. On the 14th day of May, 1869, defendant also deprived plaintiff of the key of his property under a search warrant, while in prison, May 15, 1869; also defendant is depriving plaintiff of \$1,613.25, awarded to him by the arbitration decision of J. W. Smith and Johannes Bruinier.

Plaintiff petitions the court to compel defendant to pay and make good these sums mentioned, and to pay the sum of \$5,000 damages, which plaintiff claims he has sustained by the unlawful proceedings of the United States consul at Nagasaki, Japan, being disgraced by being thrown into a Japanese prison, and in need by the transportation of Capt. E. Talmun, of schooner *Spray* (owned by myself), from Nagasaki.

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,  
*Essex, ss, April 4, 1870:*

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,  
*Justice of the Peace.*

GEORGE WILKINS LAKE }  
v. } Action for damages.  
WILLIE P. MANGUM. }

*To the Department of State, U. S. A., at Washington, D. C.:*

THE PLAINTIFF'S STATEMENT.

Nearly three years ago plaintiff received the machinery of a steam flour mill under a written agreement with R. J. McCaslin, he owning one-third. H. Holcomb and Captain Semmons owned the other two-thirds. I received said machinery in a damaged condition, of the value of about \$1,200, and erected the same on my shipbuilding yard A, at Nagasaki. There being no sale for it, it proved a bad speculation. I requested A. S. Fobes to take delivery of it and pay me what I had expended, he, A. S. Fobes, claiming that he had a power of attorney to sell said mill from R. J. McCaslin, this being in direct opposition to the agreement with R. J. McCaslin. I advertised the mill to be sold at public auction, and notified H. Fogg & Co., of Shanghai, that I intended to sell said mill, but did not do so, as I had received a letter from W. P. Mangum, United States consul, No. 146.

UNITED STATES CONSULATE,  
*Nagasaki, November 21, 1868.*

SIR: I am informed by Mr. Fobes, representing the parties who own the mill located on your premises, that you have notified him that it is your intention to sell the mill on the 30th instant. You are hereby ordered to desist selling or removing any part of said mill until the owners or parties connected can be communicated with and a proper understanding be arrived at in respect to the same.

Very respectfully, yours,

WILLIE P. MANGUM,  
*United States Consul.*

G. W. LAKE.

On receipt of the above letter I sent my account to the United States consul, requesting that he would collect it. He paid no attention to my request. R. J. McCaslin arrived in Nagasaki; he went and sold said mill to Adrian & Co. for the sum of \$5,500, without consulting with me at all, but wrote me stating that he had sold the mill to Adrian & Co., which letter I refused to accept, as he did not want to allow me but \$4,000, and that was to be settled by the decision of United States consul. On the 7th of April, 1869, I met McCaslin in the consulate, by the advice of W. P. Mangum. I agreed to leave my claim to arbitration. R. J. McCaslin agreed to it. It was drawn up, as follows:

NAGASAKI, JAPAN, *April 7, 1869.*

G. W. LAKE }  
v. } In matter of dispute on account of flour mill.  
R. J. MCCASLIN. }

We, the undersigned parties, do mutually agree to submit the arbitration and decision thereof to Capt. J. W. Smith, on the part of G. W. Lake, and Johannes

Bruinner, esq., on the part of R. J. McCaslin, with power to said J. W. Smith and Johannes Bruinner to select an umpire, and we further agree to submit to the award of said arbitration, or a majority of them, and consent that said award shall be final.

In testimony whereof we, the said G. W. Lake and R. J. McCaslin, hereunto subscribe our names.

(Day and date above given.)

G. W. LAKE.  
R. J. MCCASLIN.

Signed in presence of—

WILLIE P. MANGUM,  
*United States Consul.*

The above submission being signed, I withdrew my accounts from the consulate. On the same day R. J. McCaslin wrote me a letter, as follows:

NAGASAKI, JAPAN, *April 7, 1869.*

DEAR SIR: I have this day sold the flour mill situated on your lot in Komenohara for the sum of \$5,500. Messrs. Adrian & Co. will hold the whole amount of said sale money on account of what may be due on account of said mill, the matter which we have this day agreed to submit to arbitration.

R. J. MCCASLIN.

G. W. LAKE, Esq.

Seen and agreed upon.

ADRIAN & CO.

The next day Adrian & Co.'s clerk came to me with a note from R. J. McCaslin and requested the key, which read as follows:

DEAR LAKE.—SIR: Please let Adrian & Co. have the key to the flour mill at any time when they wish to see it.

R. J. MCCASLIN.

NAGASAKI, *April 7, 1869.*

I delivered the key and took a receipt for it, with the understanding that no part of the mill should be removed until the first decision of the arbitration. Adrian & Co. immediately commenced pulling down the mill. I went to the consul and requested that the work might be stopped. The consul sent a marshal with me and locked the mill up, I taking the key. On the 15th I wrote to Adrian & Co. a letter, as the arbitrators had informed me they would give their decision in two days, it then being in Mr. John Maltby's hands, he acting as umpire:

NAGASAKI, *April 15, 1869.*

DEAR SIR: I take the liberty to inform you, in answer to R. J. McCaslin's letter dated April 7, and seen and agreed upon by you, that I do not sanction the sale of the flour mill so far as I am concerned, and that I decline to allow the mill's being removed until the arbitrators give their decision: but as you have given me your word of honor that you will pay me the amount due me for erecting said mill, you may take said mill down and remove it, but I shall expect you to pay me the full amount as soon as the arbitrators give their decision.

From yours, respectfully,

G. W. LAKE.

Messrs. ADRIAN & CO.

After writing the above letter I went and unlocked the mill to let the men go to work removing the machinery to get ready to ship, knowing that Messrs. Adrian & Co. had a brig lying waiting for the machinery, as he said, and knowing that it would take a number of days to take it asunder to get it ready for shipment, and not thinking that the United States consul would meddle with the arbitrators and stay the proceedings, as he did by writing the following letter to Mr. John Maltby:

UNITED STATES CONSULATE,  
*Nagasaki, April 15, 1869.*

Sir: The arbitrators in the case of G. W. Lake v. R. J. McCaslin, on account of your being unable to come to a satisfactory agreement, and having selected you as umpire to decide the case I have to inform you that Messrs. H. Fogg & Co., of Shanghai, have declared to me that they have an interest in this mill; also it is necessary that you hold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

JOHN MALTBY.

WILLIE P. MANGUM,  
*United States Consul.*

This letter having been received by Mr. Maltby, he refused to proceed with the case, and gave an answer as follows:

NAGASAKI, April 15, 1869.

SIR: In reference to your case, I would state that I am not in a position to give an award at present, the proceedings having been stopped pro tem. by the United States consul as per undermentioned, and copy of letter.

I remain, sir, yours, faithfully,

JOHN MALTBY.

G. W. LAKE, Esq., Nagasaki.

On the same date I received a letter from Adrian & Co., in answer to the one I wrote to him in the morning on the same date when H. Schiff agreed to pay to me what was due me as soon as the arbitrators gave their decision, and, besides, H. Schiff, after acknowledging that he had bought said mill for \$5,500, he says in his letter that he has sold said mill for R. J. McCaslin, subjected to a commission of 5 per cent, thus lying. I again became afraid that all was not right.

NAGASAKI, April 15, 1869.

DEAR SIR: With regard to the sale of the flour mill which we sold to the Japanese by order of Capt. R. J. McCaslin, for a sum of \$5,500, less our commissions of 5 per cent, we repeat to-day, what we already told you verbally, that we shall keep this money till the arbitration between you and R. J. McCaslin now pending is decided, and shall pay you in accordance with the wishes of the United States consul the amount decided upon by the arbitrators, not exceeding the above-mentioned sum.

Your obedient servant,

ADRIAN & Co.

To Messrs. G. W. LAKE & Co., *Present.*

Here in this letter Messrs. Adrian & Co. state contrary to what they told me verbally; they agreed to pay me as soon as the arbitrators gave their decision, in a verbal conversation. In their letter they state that they shall pay in accordance with the United States consul's wishes, and also state that they have sold the mill to the Japanese, subjected to a commission of 5 per cent, thus falsifying their statements previous, and by the r previous acknowledgment of R. J. McCaslin's letter, also making R. J. McCaslin out a liar in his letter, dated September 7, 1869, in which he says that he has sold the mill to Adrian & Co. for \$5,500, thus falsifying their statements. I concluded to stop their work at the mill, and wrote the following letter to W. P. Mangum, United States consul:

NAGASAKI, April 16, 1869.

SIR: Hearing that the arbitration proceedings in reference to the claim I have against R. J. McCaslin and the flour mill has been stopped, pending an inquiry into a claim advanced by H. Fogg & Co., I shall feel obliged by your attaching the flour mill now erected on my shipbuilding yard A, at Namonhara, until my accounts against the same are satisfactorily settled.

From yours, respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,  
*United States Consul.*

The above letter the United States consul did not pay any attention to, not even acknowledging the receipt, but on the following day wrote me the following letter:

No. 17.]

UNITED STATES CONSULATE,  
Nagasaki, April 17, 1869.

SIR: I am informed by Messrs. Adrian & Co. that you have stopped the work at the flour mill, and taken away the key. This is in direct opposition to the agreement you have entered into with them and Captain McCaslin, and is an illegal act. You are hereby ordered to return the key and allow the work to be resumed. If you persist in your unlawful course, you will subject yourself to a suit for damages.

Very respectfully,

WILLIE P. MANGUM,  
*United States Consul.*

G. W. LAKE, Nagasaki.

This letter I paid no attention to, as I did not consider the consul had any business to write any such orders, as I had never delivered up the key, but on a receipt which was returned when I received the key previously, when the marshal locked the mill up. I opened the building afterwards to allow the men to work, but did not deliver the key up to Adrian & Co.

*To the United States Consular Court at Nagasaki:*

Nagasaki, April 26, 1869.

Signed and sworn to before me.

I appeared at the United States consulate, as per summons, at 10 o'clock a. m., and handed in my written statement. United States consul rejected it on the grounds that it was not in proper order. The court was to sit at 11 a. m. the 30th of April, 1869. There was no court. H. Schiff did not appear to represent his case; the court-room door was kept locked.

UNITED STATES CONSULAR COURT,  
Nagasaki, May 7, 1869.

SIR: It has been a week to-day since an extension of time was granted you to give in your answer in the flour-mill case, although you were warned at the time to make no unnecessary delay. More than ample time has been allowed you, and I have to inform you that if you do not appear by 11 o'clock a. m. to-morrow, the 8th instant, to give in your answer under oath, I shall proceed to give judgment against you by default.

Very respectfully,

WILLIE P. MANGUM,  
*United States Consul.*

GEORGE W. LAKE, Esq.

The reason of the United States consul writing such an absurd letter is a mystery to me, as he says that I was warned and an extension of time was granted me to hand in my written statement. I had my statement written out and did present it to him April 30, 1869, at 10 o'clock a. m. He refused to accept it. I was at the consulate, standing outside the door, up to a quarter to 12 m. The same statement remains in the consulate, handed in previous, on the 8th instant. The same case came off the 12th day of April. When I presented it to the United States consul he asked me if it was the same statement that was handed to him before. I said it was. He says, "Sign your name." I did. As soon as I had signed my name he ordered me to leave his office, which I did. In answer to the United States consul's letter dated May 7, 1879, I wrote the following, which I sent to the United States consul by Edward Lake. He brought it back, saying the consul called it insulting and would not receive it (the letter):

TO THE UNITED STATES CONSULATE COURT.

NAGASAKI, *May 7, 1869.*

SIR: In answer to your letter of this date, No. 24, I beg to inform the court that I did appear at the United States consulate court at 11 o'clock a. m., as per summons dated April 26, and found the court-room door locked, and it continued locked up to the time I left to go home, at 11 o'clock 45 minutes a. m. Plaintiff did not appear at the consulate. I was prepared to hand in my statement under oath, but as there was no court on the 5th of April at 11 a. m., I consider the plaintiff is the defaulter. I am prepared, and always have been, to deliver up the flour mill now in dispute on the receipt of the amount due me for erecting said mill and rent due, but as the money as per the lowest arbitrator decision, and even

good security satisfactory to myself, is still refused, I will not deliver over my lien until I am satisfactorily secured against loss and all liabilities to hereafter litigation.

From yours, respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,  
United States Consul.

The above letter, after being returned by Edward Lake, I carried to the United States consulate myself, and handed it to L. M. Dent, United States marshal. He handed it to W. P. Mangum, United States consul. The consul asked, "Is that the letter that was brought before?" I answered, "yes." The consul said he would not receive it. It was handed back to me. The consul then invited me into his private office; as soon as I entered, he, the consul, said, "Leave my office;" which I did immediately. I laid it on the table and left the consulate. There was a gentleman with me as witness—the master of the ship *Crysolite*; this gentleman was with me at the consulate on the 8th of May, 1869, the day on which I handed in my statement according to the consul's letter, dated the 7th of May, 1869, and J. W. Smith. After I had been in the consul's private office, and handed my statement to him, and was ordered out after signing my name, the consul, W. P. Mangum, called in Capt. J. W. Smith, and asked him what he came there for with that scoundrel, meaning me, which was said in my hearing. Then the office door was shut, and as per statement of Capt. J. W. Smith, the consul did shamefully abuse him in harsh and improper language on my account, so much so that Captain Smith refused to go with me to the consulate as a witness again, or on my account. The captain of the ship *Crysolite*, who remained a few moments after we had gone, was kicked out of the consulate and roughly handled by the consul and his bully, down a flight of stone steps, of which I was informed afterwards. When he came down to my place of business, marks went to prove the facts of his abuse. On the 12th of May the case came off (G. W. Lake *v.* H. Schiff), and as I well knew the case would be decided against me, it being according to all prospects, regarding the consul's determined malicious feelings and actions against me, which he, W. P. Mangum, had repeatedly manifested against me.

Mr. Lyons, paymaster of the U. S. ship *Idaho*, was one of the assessors. I heard him say to Mr. Mangum that he did not think that he (the consul) had any right to stay the arbitration case. The consul answered by saying that if he had done wrong, then he should be liable, as it had nothing to do with the case, and I must seek redress afterwards, which goes to show that the consul knew that he had done wrong, and was determined to carry it out. Previous to the case coming off, after Mr. Tromly, of H. Fogg & Co., had gone to Shanghai, and ample time had elapsed, and all the evidence that he had to bring to bear on the arbitration case had come forward, I sent Capt. J. W. Smith to the United States consulate with a copy of the agreement with R. J. McCaslin, regarding the erection of the flour mill. The consul received it and read it, and handed it back with the answer that he would allow the case to go on when he got ready. Capt. J. W. Smith also went to Adrian & Co. and offered to give up all claims to the flour mill for \$4,000. Adrian & Co. refused to pay any money or give any security. Also, when the case came off, H. Schiff was summoned by me as a witness. I asked him to produce the letter dated the 17th of April, 1869, to the court. He declined. I requested the court to demand a copy. The court paid no attention to the request. This letter was very essential to my defense. Well he knew it, and so did the United States consul, as the United States consul paid Mr. H. Schiff a visit nearly every day after staying the arbitration case.

As I had told Adrian & Co. that I knew the case would be decided against me, and that it was my intention to appeal to the United States minister, and the better way for all concerned would be for him to give me security for \$4,000. This they refused. The consul of course knew all my sayings and was determined that I should not appeal from his decision, so they reduced their claim down (which should have been over \$1,000) to \$400; thereby they thought to make the consul's decision final, as per regulations laid down by the United States minister, and are to be found in the China Directory. The case was decided against me on the 12th day of May, 1869. I was fined \$400, and costs of court, amounting to \$84.55. In and before the court I claimed the right of an appeal, and to allow the money to be paid under protest, this being said in court and before a number of witnesses. I deemed it prudent not to force my presence in the consulate, as I had been twice ordered out previously. I concluded to state my case to Captain Williams, of the U. S. ship *Oueda*, which I did, and asked his intercession on my behalf to protect me and my property. His answer was that he could not assist me any, only advise with the United States consul; but before Captain Williams went to the con-

sulate the United States consul had me under arrest by a warrant for the apprehension of my body. Previous to my being arrested, on the morning of the 13th of May, 1869, I sent the key of the storehouse in which the mill was erected to the consul by Edward Lake; the consul refused to receive it. Previous to my sending the key to the consulate Adrian & Co.'s clerk came to me and demanded the key. I refused to deliver it to him unless I had a written order for it. I also informed him that it was my intention to apply to the United States admiral, then in port, to intercede for me. He, Adrian & Co.'s clerk, went to the consulate and stated to the consul that I would not deliver up the key to him, and also told him a considerable stuff that the consul noted down about my refusing to deliver the key, and of my intentions to apply to the admiral. May 13, 1869, I was brought before the United States consul under a warrant. While before the consul he read over a long statement that Adrian & Co.'s clerk had sworn to, and mentioned from it about my intentions to apply to the United States admiral and about my refusing to deliver up the key according to the decision of the court. I took the key out of my pocket and handed it to the consul and said that I did not understand that the court ordered me to deliver the key up to Adrian & Co. The United States consul said: "Shut up, and stand up, damn you! I am going to punish you, now. I will learn you to disobey an order of this court." He ordered Mr. Dent to put me in irons and take me to jail. The irons were not put on, as I informed Mr. Dent that I would not submit to it. The consul fined me \$50 and costs of court (\$15.50), and go to jail twenty-four hours, and if the fine was not paid, to be kept there thirty days. I asked for a piece of paper to write an order on for the money, but was not allowed time or opportunity to write it, but was immediately ordered to jail. The place called prison contains a space of 6 feet by 3, with stench intolerable. The fine was paid and I was relieved from prison on the 14th of May, 1869. On leaving the prison Adrian's clerk came to me and demanded the delivery of the key. I refused to deliver the key to him unless he had an order for it. This party had lied to me once when I had lent them the key; besides he had no order from the court, and I had requested a copy of the judgment rendered and could not obtain it. I was determined to deliver the key to no one but the court.

On the 15th of May, 1869, I was again brought before the court under a warrant and fined \$50 and costs (\$19.50). As I entered the court the consul saluted me with these words, "Now, damn you, I am going to learn you to disobey an order of this court. You have refused to deliver up the key." I said that I never refused to deliver it up to the court, and was ready to deliver it up then to the court. The consul ordered me to shut up, and ordered Dent to put me in irons, but that was not carried out by the marshal. I was shamefully pushed about like a felon, to make all disagreeable passions rise that he could, so to get a hold of me that he might vent his and the consul's spite. While in jail, on the 15th of May, 1869, after being locked up, United States consul issued a search-warrant for the key, at sight of which I delivered an order for the key. Immediately after the mill was removed off my land and from my possession. After all this unnecessary persecution was over, W. P. Mangun gave orders for the arbitrators to go on with the case and give their decision, which was given May 27, 1869, of which award \$2,971.57 has been paid, leaving a balance of \$1,246.22 due me by the decision of J. W. Smith and Johannes Bruinier, arbitrators chosen by R. J. McCaslin and myself. By the decision of the arbitrators I lose about \$600, which I think is partially owing to the interference of the United States consul.

By my advices from Japan, the United States consul is now trying to break up the decision of the arbitrators. Also since I left Japan, being disgraced in the eyes of the Japanese and loss of credit, which \$5,000 is hardly sufficient to cover, the United States consul is not satisfied, but has taken the captain of a vessel called the *Spray* (owned by myself) and fined and imprisoned him in a Japanese prison. After his time was out he again arrested him (Capt. E. Tolman), and put him on board of an American man-of-war, in irons, and deported him from the country for a simple assault and battery on a Japanese coolie who smuggled liquors on board the vessel, which got the men drunk, then took the sailors out of the ship besides, causing trouble on board. The United States consul fined the vessel \$50. Herein he has done me heavy damage by depriving me of the master of my vessel, contrary to the laws of the United States.

Is my interest in this port to be absolutely disregarded through the malicious feelings the United States consul has for me, contrary to the acts of Congress?

The United States consul fined and imprisoned me twice for contempt of court, as he called it.

The acts of Congress say that in no case shall a contempt of court be construed to anything that transpires or is said or done outside the court: therefore it could not have been a contempt of court that I was fined and imprisoned for. I beg to

refer the court to articles 5 and 6, amendment to the Constitution of the United States, wherein it says that no person shall be twice put in jeopardy of life or limb for the same offense.

Have I not been twice put in prison for declining to deliver the key to my property to anyone but the court? Have I not been denied the right of an appeal, which is provided in sections 9-11 of the act of June 22, 1860, Stat., 74, wherein an appeal lies as a matter of right? But where is the right to come from, if the United States consul is determined that you shall not have the benefit of the act? He has the power, and when it suits his purpose he will and does defy the rights of the law, as you can plainly see by reading this statement over carefully. All documents pertaining to an appeal must, we know, be filed by the United States consul, and must be certified to.

But supposing the consul is determined not to allow an appeal, as in my case; he tells you that there is no appeal, and that he will not allow any, how is it to be had? I am afraid that the man who demands an appeal in some cases, and a great many that come off in consulate courts, would find himself ensconced in prison, as I was, for standing out for my rights, with but a poor chance of redress if he should persist in his claim for an appeal, in a case like mine, especially where it had been predetermined that there should be no appeal. I applied to the United States minister for redress. He told me that he had no jurisdiction in the case, and referred me to the Secretary of State. Therefore I am subjected to the persecutions of W. P. Mangum, United States consul, without any visible mode of redress.

The acts of Congress, March 2, 1793, section 5, say that no court has power to stay proceedings in any court. The consul has violated this act in the beginning. If he will violate one by staying an arbitration case without any plausible reason, why not any other act? He is determined to do mischief, and has done me a great deal by disregarding the laws of the land, by depriving me of my property and imprisoning me in a filthy Japanese prison, to my disgrace and loss of credit, contrary to law and justice.

\$400.]

Received from Edward Lake, for G. W. Lake, the sum of four hundred dollars (Mexican), amount of damages against said G. W. Lake, in a suit, H. Schiff, representing Messrs. Adrian & Co. v. G. W. Lake, for refusal to deliver a certain flour mill, according to agreement.

L. M. DENT, *United States Marshal.*

NAGASAKI, May 14th, 1869.

\$84.55.]

Received from Edward Lake, for G. W. Lake, the sum of eighty-four dollars (Mexican) and fifty-five cents, being amount of costs of court in above case of H. Schiff, representing Messrs. Adrian & Co. v. G. W. Lake.

L. M. DENT, *United States Marshal.*

\$65.50.]

Received from Edward Lake, for G. W. Lake, the sum of sixty-five dollars (Mexican) and fifty cents, being amount of fine and costs for contempt of court, in G. W. Lake refusing to obey order of the United States consular court in a suit of H. Schiff, representing Messrs. Adrian & Co., for damages in refusing to deliver a certain flour mill.

L. M. DENT, *United States Marshal.*

MAY, 1869.

\$69.50.]

Received, Nagasaki, May 15th, 1869, from Edward Lake, for George W. Lake, the sum of sixty-nine dollars and fifty cents, for a second contempt of court in a suit, H. Schiff, for Adrian & Co. v. G. W. Lake.

L. M. DENT, *United States Marshal.*

I was left to my option whether I would pay the \$400 and cost of court or have my property sold to cover it. The other two fines and costs I could pay or stay in jail thirty days on each, it being the sentence passed; if not paid, the marshal was to keep me in jail. I beg to refer the court back a few years to a case that came off against me while D. L. Moore was acting consul. He brought me before the court on a charge for detaining and maltreating a Japanese officer, who tried to stop the bread from coming or being brought into my house, and with whom I had some words. The Japanese officer drew his sword. I took it away from him. He followed me into the house and stayed there till I came back from the custom-

house. Then I took him to the custom-house, as requested by the superintendent, for which I was brought before the court and fined \$25 and cost, and be imprisoned sixteen days, and pay the doctor's bill.

I had no witnesses, and the Japanese had none present at the time. He stated that I did not strike him, and did not kick him. The consul took the case into consideration, stating that there was no evidence against me, but he must pass sentence on me, as Mr. John Walsh had recorded in the records advising imprisonment if I was brought before the court again. During Walsh's administration I was brought before the court for striking a Japanese with a revolver who had robbed me the night before of about \$200 worth of goods. I pleaded guilty and demanded the case be referred to the minister. I carried the amount of fine and cost, amounting to about \$250, to the consulate, and offered to pay it under protest. Mr. J. Walsh refused, and it remained to the time that W. P. Mangum arrived to act as consul. W. P. Mangum arrived in Nagasaki as United States consul. He sent for me, and demanded why I did not pay the fine. I said that I was willing if he would receive it under protest. He said that he would not allow it, and that I had better pay, as he would not allow any appeal from that court. I overheard J. Walsh and W. P. Mangum talking regarding my demand for an appeal, when Walsh said, "These fellows who come out here and make a little money may think they are as good as anyone." Mangum said, "We will see." Mangum came out and ordered me to pay the money, which I concluded to do, and drop it. As I found him so determined, I thought it better to lose the money than have any trouble, but was not aware that it went so far as for the consul to indorse on the register advising imprisonment maliciously, as I found out when D. L. Moore decided the case against me, as before mentioned. He held a spite against me on account of the *Anna Kimball* case, because I applied to Admiral Bell to assist me. He was heard to state in the Bellone Hotel that all he wanted was to get hold of me; he would fix me. The time came, and an opportunity offered, when he fined me, as before mentioned, and sentenced me to ten days' imprisonment. I refused promptly to submit, and demanded an appeal. He refused, and I defied his power. He kept me strictly under the marshal's charge, and would not allow me time to set forth my appeal, but I must be forthwith locked up. I defied his authority and the marshal's to put me in prison without due process of law. It was no use, and to prison I found I must go. I offered \$5,000 security; it was refused, so I defied the marshal to put me in with a revolver, and stepped into a boat and went direct to the United States minister, and received this answer—that I had taken the law into my own hands, and he could do nothing for me. This being the satisfaction I got, I went back to Nagasaki and drew up a written statement and handed it to D. L. Moore, United States consul. I had it certified to by three witnesses; then sent him a copy by the United States marshal. Then I was locked up in a Japanese prison ten days; the fine was paid by my brother, as the consul was going to sell a piece of my property. Therefore, knowing that redress was rather doubtful, as I had taken the law into my own hands, I concluded not to do anything nor defy the consul's power, as the dangers of persecution were too evident, preferring to try the law to seek redress afterwards.

Therefore I humbly pray that W. P. Mangum may be made to answer, and be judged according to law, and pay the damage caused by his interference and unjust proceedings.

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

APRIL 4, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,  
*Justice of the Peace.*

COMMONWEALTH OF MASSACHUSETTS, *Essex*, ss:

To all people to whom these presents shall come:

I, Asahel Huntington, clerk of the superior court for the county aforesaid, the same being a court of record, do certify that Joseph W. Batchelder, before whom the accompanying affidavits (two in number) were made, was at the date thereof a justice of the peace within and for said county, duly authorized and qualified to administer oaths and take acknowledgments, and that his signatures thereto are genuine.

In testimony whereof I hereunto set my hand and the seal of said court at Salem, on this 10th day of April, in the year of our Lord one thousand eight hundred and seventy,

[L. S.]

ASAHEL HUNTINGTON, *Clerk.*

**FORTY-EIGHTH CONGRESS, FIRST SESSION.**

**April 2, 1884.**

[Senate Report No. 419.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having considered the petition of Enoch Jacobs for compensation for services rendered the Department of State, beg leave to report:

That in the winter of 1871-72 Mr. Jacobs, the petitioner, visited the island of San Domingo in the capacity of correspondent for newspapers; that while there he became acquainted with one Alexander Guridi, a naturalized American citizen, who had been for two years, and then was, restrained of his liberty by President Baez; that becoming satisfied that Mr. Guridi was suffering unjustly, Mr. Jacobs, on his return to the United States and upon his arrival in Washington in May, 1872, at the suggestion of Hon. B. F. Wade, laid the facts before President Grant; that President Grant instructed him to present the case, which he had elaborately written up, to Mr. Fish, then Secretary of State; that he saw Mr. Fish, and that on the 3d of May, 1872, Mr. Fish wrote to Mr. Jacobs, requesting from him the information upon which the Department might proceed to secure Mr. Guridi's release; that Mr. Jacobs furnished the Department with the required information, receipt of which was acknowledged in a letter from Mr. Fish dated May 31, 1872; that in the following July Mr. Jacobs called upon President Grant and requested to be paid for the written statement which he had sent to the Department of State, and which he had originally intended to publish in the newspapers, and valued at \$550; that the President requested the Secretary of State to pay Mr. Jacobs this amount on this account; that on the 24th of July, 1872, Mr. Fish wrote to Mr. Jacobs, stating that there was "no sum at the Department's disposal from which he could be paid," and that on the 1st day of February, 1882, Mr. Jacobs was advised by an official letter from Mr. J. C. Bancroft Davis, Assistant Secretary of State, "that you must resort to Congress for the recovery of the amount you claim as compensation for services rendered this Department;" that under date of April 3, 1882, Secretary Frelinghuysen, in writing to a member of the Committee on Foreign Affairs of the House of Representatives, stated that "the records of the Department show that Mr. Jacobs prosecuted his work on the paper mentioned at the desire and request of Mr. Fish, then Secretary of State; but it does not appear that he did so with promise of compensation," said letter having reference to the claim under consideration.

The committee are of the opinion that Mr. Jacobs's efforts were instrumental in securing the release of Mr. Guridi from unlawful and unjust confinement; that his services in this matter were rendered at the request of the President and the Secretary of State, and that the President promised him compensation for the same. They therefore submit a bill authorizing and directing the payment of \$500 to Mr. Jacobs on this account, and recommend its passage.

April 10, 1884.

[Senate Report No. 421.]

Mr. Miller, of California, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred S. 1850, "For the relief of Richard Phoenix," having considered the same, beg leave to report it back, with recommendation that its consideration by the Senate be indefinitely postponed. In support of this recommendation they have the honor to submit the following, an extract from a report made by the Secretary of State to the committee, viz:

On the records of the Department it appears that Mr. Phoenix claims the return to him of fees amounting to several thousands of dollars, which were voluntarily surrendered by him to the consul-general Mr. Seward. He signed the receipts and made returns in proper form as if he had actually received the fees, to which he, by law, was entitled, and it is not doubted that he did surrender them to Mr. Seward in accordance with a private arrangement.

These fees would in no event have come to the Treasury of the United States, and it seems to me that the whole matter is one in which the United States has no concern.

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If the transaction now complained of was fraudulent, as Mr. Phoenix alleges, then he, in signing the receipts for fees which he did not receive, became a party to that fraud. The face of the receipts is evidence of the amount received; and, further, if the statements made by Mr. Phoenix are true, his action lies against Mr. Seward, the consul-general under whom he served, and not against the United States. As Mr. Seward is not now in the public service, and as the complaint of Mr. Phoenix includes no allegation that he owes the Government anything, there seemed to be nothing upon which this Department should act, and the claimant's attorney has been so informed.

#### FIFTY-FOURTH CONGRESS, FIRST SESSION.

April 20, 1903.

[Senate Report No. 320.]

Mr. Gray, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having had under consideration the bill (S. 2116) for the relief of Wilber H. Graef & Co., respectfully report in favor of its passage, and adopt the House report which was adopted at the first session of the Forty-ninth Congress, and is hereto appended.

[House Report No. 3101, Forty-ninth Congress, first session.]

The Committee on Ways and Means, to whom were referred papers relating to the claim of Wilber H. Graef & Co., for payment of the value, including duties, of two cases of silk goods, beg leave to report:

They find that said Wilber H. Graef & Co. were importers of silk goods at the port of New York, and that in November, 1884, they imported two cases of silks, which went into the custom-house, and while there, awaiting appraisement and assessment of duties, were stolen by George Dickinson, an officer of the Government of the United States, in whose custody they were. There is no question about the importation: none concerning the custody of the Government; and it is admitted by the Treasury Department that while in said custody the two cases of silks were taken and appropriated by the dishonest officer, and were a total loss to the said Graef & Co.

They seek to recover the value of the goods.

Your committee think it is proper for the Government to reimburse them in view of the facts and recommend the passage of the accompanying bill. The loss sustained by said Graef & Co. was \$10,000, which is the amount recommended to be paid.

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CLAIMS OF CITIZENS OF FOREIGN GOVERNMENTS AGAINST  
THE UNITED STATES.

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## CLAIMS OF CITIZENS OF FOREIGN GOVERNMENTS AGAINST THE UNITED STATES.

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### THIRTEENTH CONGRESS, SECOND SESSION.

March 14, 1814.

On petition of Don Ramon Lenares Gonzales and Ramon De Colmenere, Mr. Bibb, of Georgia, reported as follows:

That without detailing all the circumstances which were alleged in the petition, they deem it sufficient to state that the petitioners, inhabitants of the city of La Vera Cruz, arrived with two vessels in the port of New Orleans in the month of November last; that they purchased cargoes of provisions, which were put on board the said vessels; that, about to sail, they were detained by order of Brigadier-General Flournoy, until intelligence was received of the act laying an embargo, and that then, by order of the collector, they were compelled to unlade said vessels. They ask of Congress permission to export the said provisions.

It appears that the petitioners have sought redress for the detention of their vessels, previously to the embargo, by the institution of a suit against General Flournoy in the district court of the United States for the district of Louisiana. If, therefore, the detention was illegal, it is presumed that redress will be afforded. If, on the contrary, the vessels are legally detained, and the suspicions entertained by General Flournoy that the provisions were intended for the enemy be well founded, it would be improper to grant the prayer of the petition.

The committee consider it impolitic to exempt this case from the operation of the embargo, and therefore recommend the adoption of the following resolution:

*Resolved*, That the petitioners have leave to withdraw their petition with the accompanying documents.

(Annals, 13th Cong., 2d sess., 663.)

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### TWENTIETH CONGRESS, FIRST SESSION.

March 3, 1828.

On petition of William B. Wallace, attorney of F. M. Arrodondo, and others, Mr. Tazewell reported:

That the petitioner represents that the said Arrodondo and others sustained great losses of property prior to and during the years 1812 and 1814, in consequence of what they call the invasion of Florida by the American troops at those periods.

That for such losses the said sufferers have received no indemnity, although they consider themselves entitled thereto under the provisions of the Florida treaty, concluded between the United States and Spain on the 22d day of February, 1819; they therefore pray that a law may be enacted similar to that passed in 1824, which provided a mode for ascertaining the amount of indemnity for other losses of a like kind sustained at subsequent periods and provided for by that treaty.

This petition is supported by no evidence of the supposed losses, nor did the committee think it necessary to call for any such, because, as the petitioners merely pray for the establishment of a forum to ascertain the amount of their supposed losses, the evidence thereof, if any such has been sustained, for which the United States are bound to make indemnity, would of course be required by such forum if such forum should be created. The committee, however, will not recommend to the Senate the establishment of any such tribunal as that which the petition prays may be created, because the committee concur in the view taken of this subject in a report made to the House of Representatives by a committee of that body on the 10th day of March, 1826, which report accompanies this, and to it they beg leave to refer.

Wherefore this committee recommend to the Senate the adoption of the following resolution:

*Resolved*, That the Committee on Foreign Relations be discharged from the further consideration of the petition of the said William B. Wallace, as attorney for the said Fernando M. Arrodondo, in behalf of the said Arrodondo and others, and that the persons interested therein have leave to withdraw their papers.

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## TWENTY-FIRST CONGRESS, FIRST SESSION.

March 31, 1830.

[Senate Report No. 119.]

Mr. Tazewell made the following report:

The Committee on Foreign Relations, to whom was referred a bill for the relief of Don Carlos Dehault Delassus, have had the same under their consideration, and now beg leave to report:

That this bill was introduced into the Senate upon leave previously asked and obtained by a member to that effect. It is founded upon a petition which was first presented to the Senate on the 13th of December, 1824, and then referred to the Committee on Claims. This committee afterwards prayed to be discharged from the consideration of the case, and their application was granted by the Senate on the 25th of February, 1825. On the 24th of March, 1826, a motion was made and leave given to a member to introduce this bill; which, when so introduced, was again referred to the same committee, together with the petition aforesaid and sundry documents in relation thereto. The bill was afterwards reported by the committee to whom it had been referred, without amendment, and passed the Senate on the 12th of May, 1826, but does not appear to have been acted upon by the House of Representatives. On the 30th of January, 1827, the petition above mentioned was again presented and referred to the same committee; who, on the 1st of March, 1827, moved to be and were discharged from its consideration. At the present session the same bill was

again introduced into the Senate on leave, and again referred to the Committee on Claims, to which committee it had always been referred previously; but this committee was afterwards discharged from its consideration on the 12th of March, and it was then referred to the Committee on Foreign Relations. Such is the history of the proceedings had in this case.

The facts upon which the claim is based are as follows: The petitioner, previously to and upon the 23d day of September, 1810, was governor for the King of Spain of the fort and district of Baton Rouge. On that day some of the inhabitants of that region of country rose in insurrection against the Spanish Government, and surprised and took possession of the said fort. At the time of this capture there was found by the insurgents in the house of the petitioner the military chest of the Spanish Government, containing \$6,000 in silver, which money had been sent to the petitioner by the intendant of Pensacola for the purpose of paying the same due by that Government to the petitioner and others in its employment and under his command. There was also a private bureau belonging to the petitioner, containing the sum of \$1,333, which was his own individual property. Both these sums of money were taken by the insurgents and applied by them to the purposes of the provisional government then established by them; and the petitioner has never been reimbursed any part of either of them.

At the time this transaction took place, there appears to have been due to the petitioner by the Spanish Government the sum of \$1,260,12½ for his pay, and upward of \$600 more for lodging money, or rent of his house as governor, during one year eight months and seven days. Both of these sums were payable to the petitioner out of the \$6,000 found in the military chest as aforesaid; and he would have been authorized to have deducted the same therefrom as his private property, if the chest and its contents had not been seized upon by the insurgents as aforesaid. The petitioner therefore prays that he may be paid by the United States the aforesaid three sums of money due and belonging to him as aforesaid, with interest thereon from September 23, 1810.

All these facts are sufficiently established by the proofs offered to support them; but no proof has been exhibited to the committee to show that the Government of the United States had any sort of connection with the acts of the insurgents stated above.

A single view of the case thus presented rendered it quite unnecessary, in the opinion of this committee, further to extend their inquiry further into this subject. If Baton Rouge, where this seizure was made, is to be considered as having been within the territorial jurisdiction of the United States at the time of the seizure, then this claim of the petitioner (who was then certainly a Spanish subject) upon the Government of the United States is expressly renounced by the fourth renunciation of the ninth article of the treaty of February 22, 1819; and he is thereby left to the justice and liberality of Spain alone for his indemnification. If, on the contrary, Baton Rouge is to be considered as then being a Spanish territory, the transaction is nothing else than an insurrectionary movement of Spanish subjects against their own Government; and the indemnity against all such acts the petitioner never had or could have any just claim against any other government.

This committee therefore recommend to the Senate that the bill to them referred should be rejected. But should anyone conceive that this bill ought to pass, this committee can not discern any reason for

allowing to the petitioner more than the three sums which he claims, viz, the \$1,333 found in his private bureau, and the two sums of \$1,260.12½ and of \$600, making together \$1,860.12½, which was due to him by the Spanish Government, and which he might have properly taken out of the \$6,000 contained in the military chest.

(Leg. Jour., p. 213.)

## TWENTY-SECOND CONGRESS, FIRST SESSION.

February 6, 1832.

Report on the petition of Stephen Kingston in behalf of certain British subjects:

That the petitioner presents this petition to Congress as the mere attorney in fact and in behalf of Easton Alston & Co., James and Alexander Dennistown, and James Black & Co., all of whom are therein represented to be merchants of Glasgow and subjects of His Britannic Majesty.

This statement of itself suffices to show, according to the opinion of this committee, that Congress should not attend to any such application, although the petitioner is himself a citizen of the United States, and as such may very properly address to the consideration of Congress any and every complaint to which he may desire their attention, yet when he presents himself as the mere agent of the subject of a foreign sovereign the petition which he so prefers must be regarded as the application of his principals, in whose behalf only he desires to be heard. The opinion of this committee is that the legislature should never receive the applications of any such persons unless they have been previously presented to the executive department and are by that department referred to the consideration of this body. A practice which should authorize foreigners to address themselves directly to Congress, if once established in this country, would lead to the most mischievous results. It can not, therefore, be too soon or too positively arrested, and hence the committee have thought proper to present it to the Senate under this single aspect.

Should the Senate concur in the opinion entertained by this committee, they will, of course, be discharged from the further consideration of this petition. But should it be the opinion of the Senate that the petition of aliens, owing no allegiance to the United States, constitute proper subjects for the consideration of Congress, when such petitions are presented to them directly, and independently of the Executive, then it may be proper to recommend the present petition, to the end that its merits (if any) may be investigated.

At present the committee beg that they may be discharged from the consideration of this petition which has been to them referred.

(Leg. Jour., p. 116.)

## THIRTIETH CONGRESS, FIRST SESSION.

August 7, 1848.

Mr. Mangum reported on the message of the President as to extinguishment of rights to Hudson Bay and Puget Sound Land Company in Oregon:

*Resolved*, That the President be requested to extinguish, by purchase, in such manner as he may deem advisable, the rights of the

Hudson Bay Company and the Puget Sound Land Company to the navigation of the Columbia River, and all the property and other possessory rights held by them in the Territory of Oregon: *Provided*, That the sum to be given on the part of this Government shall not exceed one million of dollars.

(Ex. Jour., vol. 7, p. 469.)

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[See pp. 487, 494.]

**THIRTY-FIRST CONGRESS, SECOND SESSION.**

**February 19, 1851.**

[Senate Report No. 301.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them "to inquire into the propriety of providing by law, pursuant to the recommendation of President Polk, in his message of December 7, 1847, for payment of the claim there mentioned as arising to certain Spanish claimants in the *Amistad* case, have had the same under consideration, and submit the following report:

It appears that on the 26th of August, 1839, the Spanish schooner called the *Amistad* was taken possession of by Captain Gedney, an officer of the Navy of the United States, then in command of one of our public vessels. The *Amistad* was found at anchor on the coast of Connecticut, about three-fourths of a mile from the shore. This seizure was made at the request of two Spanish subjects, named, respectively, Ruiz and Montez, residents of the island of Cuba, then on board the vessel; and she with her entire cargo was carried with all on board into the port of New London, in Connecticut.

In the course of judicial proceedings which were there instituted before the district court of the United States, and which commenced in a claim for salvage on the part of the officer making the seizure, the following facts were elicited: That the *Amistad* was a Spanish coasting vessel, owned by her captain, a Spanish subject, and resident of Cuba; that on the 27th June, 1839, she cleared in due and regular form at the port of Habana, in that island, for Puerto Principe, in the same island. There were then on board, beside the captain and owner, a slave named Antonio, the property of the master, and the two passengers, subjects of Spain, residing in Cuba, named Ruiz and Montez. The cargo, in addition to various merchandise owned in part by said Ruiz and Montez and in part by merchants in Cuba, consisted of 53 negroes, certified in passports signed by the Captain-General of Cuba to be slaves, the property of said Ruiz and Montez; that on the voyage these negroes revolted, killed the captain and cook, severely wounded one of said passengers, and succeeded in taking possession of the vessel; that two of the sailors were sent adrift in a boat belonging to the schooner, and the negroes compelled the said Ruiz and Montez to navigate the vessel, directing them to steer for the coast of Africa; that the vessel continued at sea in possession of the negroes (the passengers availing themselves of all opportunity to direct her course toward the coast of the United States) until land was made on the coast of Connecticut, where, being

short of provisions and water, they anchored as above stated for the purpose of procuring those supplies. When discovered a party of the negroes were on shore. These were captured by the naval officer and returned to the vessel, when the whole were taken by him, as stated above, into New London. The judicial proceedings terminated in a decree for salvage, under which the vessel and cargo, the negroes excepted, were sold. The 53 negroes were declared to be free and were never restored to those claiming them. The boy Antonio, claimed as the property of the murdered captain by the Spanish consul, and admitted as such throughout, was detained in custody during these proceedings and then secreted and sent away to New York—by whom it does not appear. But the consul made diligent search for him in that city but never recovered him. And to crown the whole, the two gentlemen on board the vessel, Ruiz and Montez, were imprisoned for months on various pretexts pending the judicial trials and then suffered to depart, stripped of all the valuable property they had with them on board the vessel when seized by an officer of this Government.

Pending the judicial proceedings the district attorney of the United States filed a suggestion before the district court, setting forth that a claim for the said vessel and cargo had been made to the Government of the United States by the Spanish minister at Washington, claiming that the same was the property of Spanish subjects, and should be restored to them, as required by treaty between the two Governments.

The vice-consul of Spain for the State of Connecticut filed a libel, claiming the boy Antonio as the property of the deceased master of the vessel. And the negroes (with the exception of Antonio), in answer to the claim for salvage, denied that they were slaves, alleging that they were natives of Africa, then recently brought to Habana in violation of the laws of Spain prohibiting the slave trade, and under which laws they were free.

It appears that immediately after this capture—that is to say, in September, 1839—the minister of Spain accredited to this Government made a formal demand of the Secretary of State for the restoration of the vessel and cargo entire, under the treaty, which was followed in October by a further demand from the successor of that minister for the release of Ruiz and Montez, then imprisoned in the common jail at New York. (See Ex. Doc. No. 185, first session Twenty-sixth Congress.)

In February, 1842, this claim was made the subject of a special message to the House of Representatives by President Tyler, communicating a further correspondence between the minister of Spain and the Secretary of State during the year 1841, in which the demand was strenuously urged on this Government. (See House Ex. Doc., No. 191, third session Twenty-seventh Congress.)

In January, 1844, President Tyler communicated to the House of Representatives a further correspondence with the Spanish minister, reiterating and pressing his former demand. (See House Ex. Doc., No. 83, first session Twenty-eighth Congress.)

President Polk again brought the subject before Congress, as recited in the resolutions of the Senate, strongly recommending that the claim should be paid; and from the correspondence communicated by the Secretary of State at the present session, under a call from the Senate, it appears that this claim continues to be strenuously urged on the part of Spain before the Executive in terms of the strongest and most just remonstrance. The foregoing narrative is given to show that

Spain has been in no wise remiss in urging this demand, making it, in the opinion of the committee, the more incumbent on Congress to pass finally on the subject.

The courts of the country having taken cognizance of and made a final disposition of the subject, so far as the jurisdiction assumed by them is concerned, it remains only to be determined whether the United States are under treaty obligation, nevertheless, to indemnify these claimants.

For the due and proper observance of treaty stipulations nations look only to the contracting power—that is to say, to the government. If the treaty with Spain required that this vessel and cargo should have been delivered up to the Spanish claimants, the obligation so to do rested upon this Government, so far as Spain was concerned. And it is no answer to Spain, neither can the Government exonerate itself toward her or in the eyes of other nations, by saying that the judiciary of the country assumed jurisdiction of the subject, and thus withdrew it from the control of the Government which made the treaty and which became responsible for its observance.

By the Constitution of the United States the judiciary is constituted an independent department of the Government and its jurisdiction clearly defined, and it nowhere appears that in controversies between the United States and foreign nations arising under treaties between the respective powers the determinations of the judiciary are to bind the contracting parties. The judiciary is a passive department. It acts only through prescribed forms and when its authority is invoked by parties designated in the Constitution for causes stated in the Constitution. Its judgments are binding only upon parties to the cause and the privies of such parties. This is the universal law of the judiciary, and furnishes in itself a full answer to any objection that the decision of the judiciary is the law of the treaty on questions arising between the contracting parties. Neither Spain nor the United States were parties, or could have been made parties (*se invito*), to the controversy before the courts arising out of the seizure of the *Amistad*. It is a wise and sound rule of the judiciary, in expounding a treaty in a cause and between parties properly before it, to adopt such construction, if any, as may have been given to it by the legislative and executive departments—those departments which represent the Government in its relations with foreign nations—and this subordination would seem due to preserve the harmony of such relations. But it has never been considered that the converse is true—that the executive and legislative departments, in conducting the intercourse or adjusting the relations of the Government with foreign States under existing treaties, acts in subordination to the decisions of the judiciary. It is no answer to Spain, therefore, to say that this subject has been determined by the judiciary of the country adversely to this claim of Spain; and it becomes necessary in consequence for the executive and legislative departments of the Government, in replying to the demand of Spain, to construe the treaty originally and to decide the obligations that may arise under it. The eighth, ninth, and tenth articles of this treaty are as follows:

ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war or private and of merchants, be forced through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports belonging to the other party, they shall be received and treated with all humanity and enjoy all favor, protection, and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals

and all things needful for the subsistence of their persons or reparation of their ships and prosecution of their voyage; and they shall no ways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please without any let or hindrance.

ART. 9. All ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas shall be brought into some port of either State and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor as soon as due and sufficient proof shall be made concerning the property thereof.

ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees on the part which they shall relade and carry away.

In view of the true intent and spirit of these articles in the treaty, construed together, it might well be taken that the case would come within the true and fair meaning of the eighth, for here it is very clear that the Spanish schooner, under the guidance of Ruiz and Montez, Spanish subjects, and under a most "urgent necessity," did seek "shelter and harbor" on the coast of the United States and within its maritime jurisdiction, though from duress they were unable actually to enter any "bay, river, road, or port."

But it is the ninth article, in the consideration of the committee, on which this claim properly rests, because, in their judgment, this vessel and cargo, being "rescued out of the hands of pirates and robbers on the high seas" and carried into a port of the United States, should have been there, pursuant to the terms of the treaty, "delivered into the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor as soon as due and sufficient proof should be made concerning the property thereof."

The committee understand that "a ship or vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the laws of nations, under the exclusive jurisdiction of the State to which her flag belongs, as much so as if constituting a part of its own domain," and that according to the same laws the ship's papers, exemplified in proper form according to the laws of the nation to which she belongs, are held as, between independent nations, conclusive of the character of her voyage and of her cargo.

Upon the question how far each government is bound to give full faith and credit to the public official acts of other governments, performed in due course of law by such governments, and certified under the forms pertaining to such governments, and upon the consequences that would ensue by refusing such faith and credit, the committee can add nothing to the views contained in the opinion of the Attorney-General of the United States on the *Amistad* case, dated in October, 1839, and communicated to Congress, with other documents, by President Van Buren, in his message of April 15, 1840 (see House Ex. Doc. No. 185, first session Twenty-sixth Congress), from which is the following extract:

[Extracts from the opinion of the Attorney-General.]

In the intercourse and transactions between nations it has been found indispensable that due faith and credit should be given by each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, or admiralty, and exchequer, or other revenue courts, under the municipal law, are considered as conclusive as to the proprietary interest in, and

title to, the thing in question: nor can the same be examined into in the judicial tribunals of another country. Nor is this confined to judicial proceedings. The acts of other officers of a foreign nation, in the discharge of their ordinary duties, are entitled to the like respect. And the principle seems to be universally admitted that whenever power or jurisdiction is delegated to any public officer or tribunal, and its exercise is confided to his or their discretion, the acts done in the exercise of that discretion and within the authority conferred are binding as to the subject-matter: and this is true whether the officer or tribunal be legislative, executive, judicial, or special. (Wheaton's Elements of International Law, p. 121; 6 Peters, p. 729.)

Were this otherwise, all confidence and comity would cease to exist among nations, and that code of international law which now contributes so much to the peace, prosperity, and harmony of the world would no longer regulate and control the conduct of nations. Besides, in this case, were the Government of the United States to permit itself to go behind the papers of the schooner *Amistad*, it would place itself in the embarrassing condition of judging upon the Spanish laws, their force, effect, and their application to the case under consideration.

This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the subjects of each; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty; nor does it belong to any other nation to adjudicate upon it or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Habana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I can not see any legal principle upon which the Government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in these papers by the Spanish officers are true or not.

With the same executive document (No. 185) are communicated copies of this vessel's papers, all of which are admitted to be regular and complete, and exemplified in proper form. Among them are manifests of passports signed by the Captain-General of Cuba, attesting that these negroes were slaves, and were the property of said Ruiz and Montez, respectively, with a license to transport them from Habana (the port whence the vessel sailed) to Puerto Principe, in the same island of Cuba.

The committee hold that in questions between this Government and Spain arising under the treaty, these documents are conclusive upon the United States, both as to the condition of the subject—that is to say, the slavery of the negroes—and as to the property of the claimants. On being remanded to the jurisdiction of Spain, as contemplated and provided for by the treaty, any inquiries as to the validity of the evidence they imported may have been proper for her tribunals on questions either as to the slavery of the negroes or the rights of property of the claimants inter se.

But again, were it competent to the United States to look into evidence to contradict these documents certifying the condition of these negroes, the committee concur entirely in the opinion of the same Attorney-General, that the United States could not rightfully undertake to decide questions arising under treaty stipulations made between Spain and other nations, to which this Government is no party. The institution of slavery exists in the island of Cuba, a Spanish dependence, and is protected there by the laws of Spain. It appears that in the year 1819, Spain contracted by treaty with England to abolish and prohibit the African slave trade within her dominions, and it is alleged that these negroes were imported into Cuba

subsequent to that treaty. If this be so, it may follow that if done with the connivance of Spain, it is in violation of that treaty; or if by her subjects, without authority, that, by proceedings in the proper tribunals constituted by that treaty, the negroes would have been declared free, and the offenders punished; or if either, that England would have had cause of complaint against Spain, and have been entitled to redress. But in no aspect can it be admitted that the United States could undertake to decide upon the effect and operation of treaties between foreign powers exclusively, not affecting the rights of citizens of the United States.

Upon the whole, the case, as fully shown by the documents above referred to, is nakedly this:

A Spanish vessel and cargo owned by subjects of Spain is found on the high seas near the coast of the United States in possession of lawless negroes, who had obtained such possession by murder and rapine.

Two of the passengers in the vessel, also subjects of Spain, who are the principal owners of the cargo, and the only survivors of the white men who set out on the voyage, were found on board, held in duress and in imminent peril of their lives by the negroes, and at their urgent solicitation for the safety of their lives and property the vessel and cargo were seized by a public vessel of the United States and brought into a port of the United States.

The vessel was on a lawful voyage under the flag of Spain, and with regular and complete sea papers.

On these facts the committee unhesitatingly pronounce that independent of positive treaty stipulations decent courtesy or the ordinary hospitality of civilized countries would have required, in the language of the eighth article of the treaty with Spain, that these helpless foreigners thus cast upon our shores should have been "treated with all humanity, and have enjoyed all favor, protection, and help." But if not so, the terms of the ninth article of the treaty are too clear to admit of doubt, and, in the opinion of the committee, the case of the *Amistad* and cargo comes fully within it.

It was incumbent on the United States on the arrival of the *Amistad* at the port of New London to have seen that she was "delivered to the custody of the officers of that port;" that by them she was "taken care of;" and, finally, that the vessel and cargo were "restored entire to the true proprietor"—such being the plain language of the treaty.

That such was the obligation of the treaty the Government of the United States was fully advised by the Attorney-General in the opinion cited above; and the committee add, as appearing from the correspondence communicated with document No. 185, before referred to, that President Van Buren, in whose Administration the case occurred, had caused one of our public vessels to await, off the port of New London, the decision of the district court of the United States while the case was depending, with orders, upon the release of the negroes from custody of the court, to receive them on board and to convey them to Habana, there to be released to the authorities of Spain.

As to the slave Antonio, there is no justification for the failure to restore him, except that he was in some mysterious manner lost or stolen after the trial was over, and thus the Government was unable to comply with its treaty obligation as to him.

In estimating the allowance that should be made for the whole claim, the committee find that the actual value of the property at Habana, when there shipped, with the reasonable expenses of said

Ruiz and Montez while detained in this country in their effort to reclaim it, with interest thereon, will exceed the sum of \$50,000; and they report a bill for payment of that sum accordingly.

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[See pp. 481, 494.]

**THIRTY-SECOND CONGRESS, FIRST SESSION.**

**March 29, 1852.**

[Senate Report No. 153.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them "to inquire into the propriety and justice of providing by law, pursuant to the recommendation of former Presidents of the United States, and last by President Polk, in his message of the 7th December, 1847, for the payment of the claim there mentioned as arising to certain Spanish subjects in the case of the schooner *Amistad*," have had the same under consideration, and submit the following report:

[See Senate Report 301, Thirty-first Congress, first session, p. 481.]

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**June 23, 1852.**

[Senate Report No. 272.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the message of the President of the United States of the 15th June, 1852, communicating a report from the Secretary of State, together with a letter from Señor Don Calderon de la Barca, minister of Spain to the United States, claiming indemnity for losses sustained by certain Spanish subjects by the unlawful violence of a mob in New Orleans, consequent on hearing of the execution of certain persons who unlawfully invaded the island of Cuba in August, 1851, with the recommendation of the President contained in said message, that the indemnity should be granted for the reasons therein set forth, have had the same under consideration.

At the same time with the foregoing, the committee brought under their consideration two resolutions of the Senate, the one instructing them to "inquire into the propriety of authorizing the President of the United States to have investigation made whether any Spanish subjects, not citizens of the United States, have sustained damage by loss of property or otherwise in consequence of the public outbreak or violence in the State of Louisiana, growing out of the late Cuban expedition, and into the propriety of authorizing the President to make indemnity to the Spanish Government for such Spanish subjects for said damage," and the other instructing a like inquiry into losses of like character by subjects of Spain in Florida.

The committee having given to the subject thus committed to them the full consideration which their peculiar character would seem to require, now respectfully report:

From information before the committee it appears that a large number of persons, most of whom were not citizens of Louisiana, had assembled in the city of New Orleans with the intent of reenforcing those who had sailed for Cuba in the illegal and highly culpable expedition spoken of in the message of the President, and were there awaiting the means of transportation, when intelligence was received of the capture and execution by the authorities of Cuba of certain of their comrades already landed in that island.

The sensation produced by this intelligence among a band of lawless men assembled for a purpose forbidden alike by the laws and by good morals led them at once to the perpetration of the acts of violence complained of, banding themselves together in open violation of the laws of the State where they were assembled, and in defiance of the attempts of the local authorities to restrain or disperse them, they proceeded to avenge their disappointment by acts of violence upon the peaceful and unoffending subjects of Spain then residing in New Orleans, insulting their persons and wasting and destroying their property.

The committee are satisfied that these outrages were committed chiefly, if not exclusively, by persons assembled at New Orleans of the character and for the objects indicated above, and that they were instigated and incited by a spirit of revenge on learning the capture and execution of their culpable associates who had preceded them in the invasion of the dominions of Spain.

Under these facts the question is presented by the papers referred, whether it is incumbent on the United States, either by treaty stipulation or in national faith, to make good to the subjects of Spain losses so incurred, or if not so incumbent, then whether under the special circumstances of the case, and in the view presented by the message of the President, there are not considerations growing out of the magnanimous courtesy exhibited by the Queen of Spain toward the United States in promptly extending, at the request of the American minister at Madrid, a free pardon to the survivors of the invasion who were captured alive, which would impose upon this Government obligations toward Spain as sacred as those resulting from actual contract.

After a careful examination of the treaty of 1795, cited in the communication of the minister of Spain, the committee can find nothing either in its letter or its spirit which imposes on this Government the duty of providing the indemnity in question. The thirteenth article, which is more particularly referred to, is limited altogether to a state of war, and it can not be said in any sense, nor is it alleged on the part of Spain, that war existed between the two nations at the time those injuries were done to the subjects of Spain.

Neither does the committee find any obligation on the United States arising out of the good faith of nations to each other to provide the indemnity asked for the losses sustained on the occasion inquired into.

While it may be admitted that a government is bound to provide for the security of all who live under the protection of its laws, as well in their property as in their persons, and that aliens permitted to reside there are as much so entitled as citizens; yet it can not be claimed that any such relations pertain between citizens or residents of any of the States and the Government of the United States. The jurisdiction of the Government of the United States over the persons and property of those within its territory is strictly limited by the

Constitution. There is no power conferred by that instrument to provide by law for the security either of private persons or their property within the States in time of peace, unless it may be by treaty stipulation; neither, if the laws of the States themselves are inadequate to afford such protection, is it competent to this Government to interfere or control the subject. Foreigners who come to reside in any of the States are of course presumed to do so with a knowledge of the laws to which they submit themselves, as well those which constitute and regulate government as those of ordinary civil or municipal character, and it results, should the local law refuse redress for mere personal wrongs, such foreigners have no claim by appeal to this Government.

But although in the opinion of the committee there is no actual obligation on the Government of the United States to provide the indemnity claimed by Spain in this behalf, yet they are gratified in having it in their power to recommend it nevertheless without the risk of establishing an injurious precedent. In this view the committee fully adopt the sentiments of the President when he declares in his message that—

The Queen of Spain, with a magnanimity worthy of all commendation, in a case where we had no legal right to solicit the favor, having granted a free pardon to the persons who had so unjustifiably invaded her dominions and murdered her subjects in Cuba in violation of her own laws as well as those of the United States and the public law of nations—such an act of mercy, which restored many misguided and unfortunate youths of this country to their parents and friends—seems to me to merit some corresponding act of magnanimity and generosity on the part of this country: and I think there can be none more appropriate than to grant an indemnity to those Spanish subjects who were residents among us and who suffered by the violence of the mob, not on account of any fault which they had committed themselves, but because they were the subjects of the Queen of Spain.

Under the peculiar circumstances of the case such indemnity may, in the opinion of the committee, be quite as well considered as in the nature of amends for injuries to a friendly power, committed within the limits of the United States, as of compensation to the individuals who suffered.

In the eye of the mob the Government of Spain was the actual and only offender, and it was to avenge an imaginary wrong by the sovereign that the innocent subjects, while under a foreign jurisdiction, became the victims of their lawless violence. In the annual message of the President at the commencement of the present session the fact that the consul of Spain, then residing at New Orleans, was one of the sufferers by the mob is made known to Congress. As the accredited agent of a foreign power, this officer, both in person and property, is entitled to the safeguard of this Government, and is of course included in the indemnity proposed.

The sum required to provide this indemnity will be trivial in amount, and in recommending it the committee again concur with the President that the act will “commend itself to the generous feeling of the entire country,” and granting it under the circumstances will “tend to confirm that friendship which has so long existed between the two nations and to perpetuate it as a blessing to both.”

The occurrences at Key West were similar in character, it is believed, to those at New Orleans, and fall within the same reasoning. They report, therefore, a joint resolution to cover both, and annex as part of this report the message of the President with the documents accompanying it.

## PRESIDENT'S MESSAGE.

*To the Senate and House of Representatives:*

I transmit herewith, for your consideration, a report from the Secretary of State accompanied by a communication from His Excellency Señor Don A. Calderon de la Barca, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, claiming indemnity for those Spanish subjects in New Orleans who sustained injury from the unlawful violence of the mob in that city, consequent upon hearing the news of the execution of those persons who unlawfully invaded Cuba in August, 1851. My own views of the national liability upon this subject were expressed in the note of the Secretary of State to Mr. Calderon of the 13th November, 1851, and I do not understand that Her Catholic Majesty's minister controverts the correctness of the position there taken. He, however, insists that the thirteenth article of the treaty of 1795 promises indemnity for such injuries sustained within one year after the commencement of war between the two nations; and, although he admits this is not within the letter of the treaty, yet he conceives that, as between two friendly nations, it is within the spirit of it.

This view of the case is, at his request, submitted for your consideration. But, whether you may deem it correct or not, there is perhaps one ground upon which this indemnity, which can not be large in amount, may be granted without establishing a dangerous precedent, and the granting of which would commend itself to the generous feeling of the entire country, and that is this: The Queen of Spain, with a magnanimity worthy of all commendation, in a case where we had no legal right to solicit the favor, granted a free pardon to the persons who had so unjustifiably invaded her dominions and murdered her subjects in Cuba in violation of her own laws, as well as those of the United States, and the public law of nations. Such an act of mercy, which restored many misguided and unfortunate youths of this country to their parents and friends, seems to me to merit some corresponding act of magnanimity and generosity on the part of the Government of this country; and I think that there can be none more appropriate than to grant an indemnity to those Spanish subjects who were resident among us and who suffered by the violence of the mob, not on account of any fault which they themselves had committed, but because they were the subjects of the Queen of Spain. Such an act would tend to confirm that friendship which has so long existed between the two nations, and to perpetuate it as a blessing to both; and I therefore commend it to your favorable consideration.

MILLARD FILMORE.

WASHINGTON, June 14, 1852.

DEPARTMENT OF STATE,  
*Washington, June 12, 1852.*

The Secretary of State has the honor to lay before the President a translation of a note of the 22d of April last, addressed to this Department by Señor Don A. Calderon de la Barca, Her Catholic Majesty's envoy extraordinary and minister plenipotentiary, asking that those Spanish subjects whose property was destroyed in the popular tumult at New Orleans in August last may be indemnified therefor. The Secretary of State accordingly suggests that Congress be recommended to make provision for the reparation desired.

Respectfully submitted.

DANL. WEBSTER.

The PRESIDENT OF THE UNITED STATES.

LEGATION OF SPAIN,  
*Washington, April 22, 1852.*

In pursuance of his duty, the undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, informed his Government in due time that in consequence of the jury at New Orleans not having been able to agree they had not succeeded in proving who had been the instigators of the riot which had been excited in that city against Spanish subjects in August last, and that the instigators aforesaid had, therefore, remained unpunished.

Her Catholic Majesty's Government has, in reply, given instructions to the undersigned, in consideration of which he proceeds to submit to the noble rectitude of the Hon. Daniel Webster some few remarks, which he flatters himself will receive his attention.

The above-mentioned case, the fact of there having been no agreement, neither on the part of the jury in the trial against the instigators and actors in the piratical expedition which was repulsed at Cardenas and the recent disagreement likewise of the New York jury in the suit which had been instituted there against O'Sullivan, the Hungarian Schlessinger, Captain Lewis, and others, of which the two last-mentioned had not only formed part of the Cardenas expedition, but also of that which the steamer *Cheopatra* had proposed to convey and of the one that landed at Bahia Honda, have naturally given cause to doubt whether Her Majesty's subjects who were robbed of their property in New Orleans will obtain from the local authorities of that place the just compensation which they claim. The Government of Her Catholic Majesty has considered the principle laid down by the honorable Secretary of State in his note of the 14th of November last, that foreigners must subject themselves to the laws which are in force in the country which they have selected for carrying on business in, and it does not pretend to controvert them, seeing that the application of those laws must be reciprocal. There is, however—with due deference be it said—a striking difference between the occurrences in question and ordinary individual wrongs. The only origin and exclusive cause of all the disasters that the subjects of Her Catholic Majesty experienced in New Orleans in the month of August last was the invasion of the island of Cuba by American citizens organized, equipped, and armed for that purpose in the territory of the United States, in spite of the warnings of the upright Supreme Magistrate of the Republic and of the laws of the land, and in defiance of moral precepts and the laws of nations.

The personal outrages and plunder of houses and business establishments belonging to the subjects of Her Catholic Majesty were not the effect of a riotous attack on the part of the inhabitants of New Orleans; they were not individual acts perpetrated without cause upon individuals. The most active abettors and actors in those lamentable scenes were citizens of the United States who had assembled in that city from various parts of the Union, with arms in hand, and who were watching for an opportunity to embark and follow those who had preceded them, for the purpose of seizing the island of Cuba, where, with this object in view, they had in a perfidious manner introduced war and spilled the blood of those who had performed the sacred duty of defending their soil. In short, the plundering of the property of Spaniards in New Orleans was an episode. It was one of the consequences of the bloody and illegal invasion of a friendly territory in the midst of peace.

Those who took part in the drama dispersed—they can not be reached—and even if they were, and these persons should be identified after long litigations and consequent expenses on the part of the claimants, the latter have no means of obtaining redress for the damages sustained. Not wishing to weary the attention of the Secretary, because he thinks it unnecessary, the undersigned will not quote what Vattel (Book II) and other more modern writers on common law have written in favor of the claimants. For the same reason he will likewise abstain from alluding to the spirit of the treaty of 1795, and will only refer to the thirteenth article of the same, which reads as follows:

“For the better promoting of commerce on both sides it is agreed that if a war should break out between the said two nations, one year after the proclamation of war shall be allowed to the merchants, in the cities and towns where they shall live, for collecting and transporting their goods and merchandise, and if anything be taken from them, or any injury be done them, within that term by either party, or the people or subjects of either, full satisfaction shall be made for the same by the Government.”

If, then, it is agreed that the Government is the party which must make redress for injuries occasioned, even one year after a formal declaration of war, it appears to the undersigned that, a fortiori, this obligation loses none of its force, but on the contrary, when the damages have been occasioned by the people and the citizens of the United States in time of profound peace, not against this or that individual, but against a whole class of men; not in consequence of private wrongs, which are within the pale of the jurisdiction of ordinary tribunals, but from deadly hatred against the nationality of the parties aggrieved.

If these reflections should succeed in inducing the honorable Secretary of State to look upon the question in this light, and in doing so he should further take into consideration the friendly relations which happily exist between the two countries, the undersigned does not hesitate in flattering himself that the Hon. Daniel Webster will find, in his equity and wisdom, the generous remedy that the condition to which several peaceful, industrious, and honorable Spaniards have been reduced by violence in New Orleans requires. The undersigned cherishes a hope that His Excellency the President will be pleased to give his assistance by recommending to Congress the appropriation of the necessary funds for this purpose, as he recom-

mended in the instance of the promised indemnity to the consul, Don Ignacio Laborde. From the magnanimous sense of justice of the representatives of the Union, one can not but confidently hope that such recommendation will be attended to. In the meanwhile the undersigned avails himself of this opportunity to renew to the Hon. Daniel Webster the assurances of his most distinguished consideration.

A. CALDERON DE LA BARCA.

The Hon. DANIEL WEBSTER,  
Secretary of State of the United States.

### THIRTY-THIRD CONGRESS, FIRST SESSION.

March 9, 1854.

[Senate Report No. 151.]

Mr. Weller made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Francisco Lope Urriza, having had the same under consideration, report:

That the petitioner seeks to obtain from this Government remuneration and indemnity for certain losses alleged to have been sustained by him in Lower California in 1846 and 1848, while that territory was in the military possession and under the protection of the United States.

The first item is for \$10,250, the value of the schooner *Julia*, seized by Commander S. F. Dupont, of the United States Navy, while lying dismantled at La Paz, on the 18th September, 1846, and subsequently on the 24th June, 1847, condemned as a lawful prize and ordered to be sold by Alcalde Walter Colton, as judge of the United States court of admiralty at Monterey.

Second, for \$1,600, the value of a lot of cotton yarn deposited in the house of Don Francisco Palacio de Micanda, in La Paz, and destroyed by the Mexican forces in an attack upon the town, on the 16th November, 1848.

Third, for \$3,287, the amount of arrearages alleged to be due him for pay as a retired lieutenant-colonel of the Mexican army, lost by his espousing the American cause.

Fourth, for \$5,000, the alleged value of the island San Jose, which he was compelled to abandon after the restoration of Lower California to Mexico, under the treaty of Guadalupe Hidalgo.

In regard to the first item, there is no evidence to show that the schooner *Julia* had ever been engaged in the service of the enemy. On the contrary, it is proven that she had been employed in peaceful commerce between La Paz and Mazatlan. That while lying at La Paz, in a dismantled condition, without either flag or sails, on the 18th September, 1846, she was seized by Commander S. F. Dupont, of the United States Navy, used as a tender for some months, and on the 24th June, 1847, condemned and ordered to be sold as a lawful prize, by Alcalde Colton, as stated in the petition.

It is further proven that Commodore Sloat, then commanding the naval forces of the United States on the Pacific coast, had, prior to the said seizure of the schooner *Julia* (on the 7th July, 1846), issued a proclamation to the citizens of California, in which he pledged full and ample protection, both of persons and property, to such of them as should lay down their arms and either espouse the cause of the United States or remain neutral in the contest.

That upon the issuing of that proclamation, the petitioner at once became an active partisan in our ranks, and identified himself with our cause; and further, that the said schooner *Julia* was, at the time of seizure, the property of the petitioner, and of the value of \$10,250, as stated in the petition.

These facts are fully established by the testimony of American officers who were privy to the transaction.

Under these circumstances, it is clear that the schooner was not properly subject to seizure. And besides, the United States not having established a court of admiralty at Monterey, the decision of Alcalde Colton, condemning and ordering the vessel to be sold, was wholly unauthorized and illegal. The committee therefore recommend the allowance of this item.

The cotton yarn for which compensation is claimed, as shown by the evidence, was, when destroyed, deposited in a private house not occupied by our troops for military purposes at the time it was burnt; nor does it appear that it had been previously so occupied. In no case has a claim of this character ever been allowed to our own citizens, and it should not be allowed in this.

As to the arrearages of pay due to the petitioner as a retired lieutenant-colonel in the Mexican army, and forfeited by his taking side against his own country, upon no principle of justice or national morality recognized by this Government can this item be allowed.

In regard to the fourth item, without entering into a consideration of the question how far a naval commander in an enemy's country can, by his proclamation, bind this Government, it is believed that the protection promised by Commodore Sloat to the citizens of California, in his proclamation of the 7th July, 1846, referred alone to Upper California, and therefore can not apply to any rights of property in the island in question, it being an appendage of Lower California, which, under the treaty above mentioned, still remained as a part of Mexico. This item, therefore, should not be allowed.

In accordance with the views above presented, the committee report the accompanying bill:

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[See p. 494.]

April 13, 1854.

Mr. Mason reported as follows:

The Committee on Foreign Relations, to whom was referred the memorial of Charles Dubois de Suchet, claiming to be a subject of His Imperial Majesty the Emperor of the French, for himself and others, by J. M. Carlisle, his attorney in fact, stating that he and others are the holders and bona fide owners of certain bonds of the Government of the Republic of Mexico to a large amount, representing a certain national debt of that Government for the payment of which the public lands of said Republic and proceeds thereof were pledged, except of those on the frontiers, and being advised that a treaty with the said Republic for the cession of a part of the said lands to the United States is now pending before the Senate, and that the presentation of this notice before the acceptance of the cession will bind the United States to the satisfaction of the said debt, and stating that he therefore gives such notice, and will claim full and complete satisfaction and indemnity for the debt and interest due and accruing to him

and them from the United States, report the same with a recommendation that it be returned to J. M. Carlisle, attorney in fact for said Charles Dubois de Suchet.

(Ex. Jour., vol. 9, pp. 283-294.)

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[See p. 493.]

### THIRTY-FOURTH CONGRESS, FIRST SESSION.

August 9, 1856.

On resolution authorizing James M. Carlisle, esq., to copy the memorial of M. Dubois Suchet, a subject of the French Emperor, with reference to his claims against Mexico, Mr. Mason reported the following order:

*Ordered*, That the memorial of Charles Dubois de Suchet, for himself and others, by James Mandeville Carlisle, his attorney in fact, presented to the Senate in executive session on the 10th of April, 1854, together with the exhibits referred to therein, be returned by the Secretary of the Senate to the said Dubois, or to the attorney, James Mandeville Carlisle, in concurrence with the recommendation of the Committee on Foreign Relations, reported on the 13th of April, 1854.

(Ex. Jour., vol. 10, pp. 138-139.)

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[See pp. 481, 487,]

### THIRTY-FIFTH CONGRESS, FIRST SESSION.

February 2, 1858.

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred so much of the message of the President of the United States as relates to the claim made by the Government of Spain of certain Spanish subjects in the case of the schooner *Amistad*, and recommending that provision be made by law for its payment, have had the same under consideration and report:

The justice of this claim, and the obligation of the United States to provide for its payment, has been, as stated by the President in his message, recognized by more than one of his predecessors. It has also met, heretofore, the favorable consideration of the Senate. At the session of 1851-52 it was the subject of a special report of the Committee on Foreign Relations of the Senate. The committee, entirely concurring in the views taken in that report, adopt them, and now report accordingly.

[See Senate Report 301, Thirty-first Congress, first session, p. 481.]

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February 2, 1858.

### VIEWS OF THE MINORITY.

[Senate Report No. 36.]

Mr. Seward made the following report:

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them to inquire into the propriety

and justice of providing by law for the payment of the claims, etc., in the case of the schooner *Amistad*, having had the same under consideration, and the majority of said committee having reported favorably to said claim, the minority submit the following adverse report:

The facts upon which the claim to indemnity are founded are substantially as follows:

In the year 1839 certain Cuban slave dealers imported from Africa a number of negroes, natives of that country, and on the 12th of June of that year landed them from their vessel in Havana, where they were imprisoned in the barracoon of that city, and sold as slaves. They were purchased by Don Pedro Montez and José Ruiz, subjects of the Spanish Crown, with full knowledge of their character, and of the mode in which they had been brought from their native country, not one of the Africans being able to converse in the Spanish language, or to understand it.

On the 22d of June, ten days after their landing at Havana, Montez obtained a permit from the Governor-General of Cuba to transport three "ladinoes," or legal slaves, from Havana to Principe, on the south side of the island; and on the 27th of June Ruiz obtained a like permit to transport forty-nine "ladinoes" to the same port.

Under claim that these Africans were legal slaves, they were placed on board the *Amistad*, a Spanish coasting vessel, owned by her captain, a Spanish subject, and resident of Cuba; and on the 27th of June, the same day on which the last permit was obtained, she cleared from Habana for Principe, having on board the captain, a boy named Antonio, claimed by him as a slave, two sailors, Ruiz and Montez, and the fifty-two negroes.

On the 1st of July, while on the eastern coast of the island, the Africans rose and claimed their freedom. The captain and cook, attempting to restrain them, were slain, and Ruiz and Montez and two sailors surrendered the vessel to them. They sent the sailors on shore, retained Ruiz and Montez, and directed them to steer the vessel for the African coast. In the darkness the vessel was steered northward, and on the 28th of August came to anchor off the coast of Connecticut, near the eastern shore of Long Island, and in the vicinity of New London, to which place she was taken by Lieutenant Gedney, of the ship *Washington*, a vessel of the United States, she having been brought to anchor there for the purpose of procuring provisions, and a part of the negroes being on shore for that purpose at the time of her capture.

2. Upon these facts judicial proceedings were instituted to determine the question of salvage and the ownership of the negroes, claimed to be the lawful property of Montez and Ruiz.

These claimants, on the 29th of August, 1839, filed their claim in the district court of the United States, demanding these Africans as their slaves and requiring their rendition under our treaty stipulations with Spain; and on the 19th day of September the Africans filed their answer, denying that they were, or ever had been, slaves to Montez and Ruiz, or any other person, but that they were free, and always had been.

The case was ably tried and fully argued in the district court, and decided in favor of the Africans, thus establishing their freedom.

An appeal was taken from this decision to the circuit court, in which the judgment below was affirmed.

From this judgment the case was removed to the Supreme Court of the United States, where, after due consideration and advisement, the decision was reaffirmed.

The court says:

It is plain, beyond controversy, if we examine the evidence, that the negroes never were the lawful slaves of Ruiz and Montez, or of any other Spanish subject. They were natives of Africa, and were kidnapped thence, and were unlawfully transported to Cuba in violation of the laws and treaties of Spain and the most solemn edicts and declarations of that Government. By their laws and treaties and edicts the African slave trade is utterly abolished. The dealing in that trade is deemed a heinous crime, and the negroes thereafter introduced into the dominions of Spain are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes with a full knowledge of all the circumstances; and so cogent and irresistible is the evidence in this respect that the district attorney has admitted in open court, upon the record, that these negroes were native Africans and recently imported into Cuba, as alleged in their answer.

Every facility was afforded by the President to these claimants. Learned counsel were employed on the argument, and a vessel of the United States was detailed to deliver over the negroes if the court should pronounce them slaves. They were set at liberty as freemen by a well-considered judgment of the highest legal tribunal of the country where the fact was directly in issue. (15 Peters's U. S. Reports.)

The Spanish minister, however, at the solicitation of the claimants, brought the matter to the attention of the President of the United States, and from 1839 to this time (nineteen years) it has been made the subject of frequent attention in some way.

President Tyler brought it to the notice of the Twenty-seventh Congress in a special message in 1842, and again in 1844, and President Polk in 1847, notwithstanding the above decision, recommended to Congress to appropriate means for the payment of this claim, thus solemnly adjudged to have no validity.

The vessel was sold for salvage, and the boy Antonio escaped and was never afterwards found.

Our obligations in this respect are supposed to arise out of the eighth, ninth, and tenth articles of our treaty with Spain.

ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports belonging to the other party, they shall be received and treated with all humanity and enjoy all favor, protection, and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons or reparation of their ships and prosecution of their voyage, and they shall noways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please without any let or hindrance.

ART. 9. All ships and merchandise of what nature soever which shall be rescued out of the hands of any pirates or robbers on the high seas shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor as soon as due and sufficient proof shall be made concerning the property thereof.

ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees on the part which they shall relade and carry away.

The United States are in no manner compromised or obliged to satisfy this claim by these executive recommendations, made in the face of an adjudication of our highest court, and without any new facts on which to base them.

Still, the frequency and pertinacity with which this claim is urged, and especially by the present Executive in his message of December 8, 1858, who uses the following language in respect to it: "Our minister is met with the objection that Congress has never made the appropriations recommended by President Polk in December, 1847, 'to be paid to the Spanish Government, for the purpose of distribution among the claimants in the *Amistad* case. A similar recommendation was made by my immediate predecessor in his message of December, 1853, and entirely concurring with both in the opinion that this indemnity is justly due under the treaty with Spain of the 27th October, 1795, I earnestly recommend such an appropriation to the favorable consideration of Congress,'" calls upon and justifies the minority of the committee in giving it a careful consideration, and they have no hesitation in recommending the rejection of the claim for the following among other reasons:

First. Ruiz and Montez, the Cuban claimants, had no property in these Africans, and could not have held them, even by the laws of Spain, if the facts proved in the United States court had been ascertained before a Spanish tribunal, they having been kidnapped and stolen from Africa in violation of national law, by an act of piracy, and these claimants buying them with full knowledge, acquired no rights in them superior to those possessed by their original captors.

The Crown of Spain, in 1817, in a treaty with Great Britain, agreed to abolish the slave trade and declare it piracy; by its decretal order, made soon after it declared the slave trade abolished through all her dominions, including her colonies, and asserted the freedom of all Africans who should be thereafter imported into any of her national or colonial ports, as these Africans were imported into Cuba after the passage of this ordinance, they were free by the law of Spain. Their capture was piracy; their detention in bondage by anyone was illegal; these claimants, therefore, had no property in them, but were themselves violators of law, and held them in unlawful imprisonment.

If these negroes were not "property" by the laws of Spain, it is too plain for argument that their pretended owners have no just claim for indemnity against us. This principle was decided in the case of the *Amedie*. (1 Acton Reps., 240.)

Second. Our treaty stipulations with Spain contemplate the restoration of "lawful merchandise," rescued "out of the hands of pirates or robbers on the high seas, as soon as due and sufficient proof shall be made concerning the property thereof."

1. These negroes we have seen were not "lawful merchandise."

2. They were not rescued from "pirates or robbers on the high seas." Indeed, it is perfectly clear that the "piracy" consisted in the unlawful detention of these Africans by Ruiz and Montez, and it is difficult to perceive how they could have escaped the penalty of the law if taken in the act of carrying off these negroes against their will, after they were landed any more than before.

How men stolen from their homes, in violation of all law and right, and rescuing themselves out of the hands of their captors, and returning to that home, can be called "pirates" is beyond comprehension.

3. There was never any "proof" offered to show these Africans the property of the claimants. In the nature of the case this could not be done. So that the case falls within no single provision of the ninth article of the treaty.

4. The vessel and owners were themselves engaged in an act of piracy and robbery as much as if no landing had ever been effected in

Cuba and they had been transferred on the high seas from one vessel to the other; it was a continuation of the piracy, and the vessel was contraband and forfeited, with all property of her owners on board, which would have included Antonio, if he could have been deemed a "chattel" by the laws of the United States.

5. The facts were ascertained by the court in a case in which the claimants were parties to the record in fact; and although the decision of the Supreme Court is no estoppel upon a coordinate branch of the Government—the legislative—still, as its decision was just, it should be respected and made a finality.

6. The court had power, and Congress has power, to go behind the record—the permits of the Governor-General of Cuba; but whether this be done or no, it is clear that the permits authorized only the transfer of legal slaves. These Africans were not such slaves. When that fact was proved, it became apparent that the attempt to smuggle them through under the authority of this permit was a gross fraud, which the papers did not and could not justify.

A pirate on the high seas may have legal papers as a merchant vessel; but when the fact of his actual character is proved by evidence aliunde the papers are no protection; they are only *prima facie* evidence, liable to be contradicted by competent proof.

A pirate is an outlaw, and liable to be punished by any nation taking him, and no obligation exists to deliver up pirates to the government to which they purport to belong. (Kent, vol. 1, 202.)

The case of the *Amedie* was the earliest decision in the English courts on the great question touching the legality of the slave trade on general principles of international law. That was the case of an American vessel employed in carrying slaves from the coast of Africa to a Spanish colony. She was captured by an English cruiser, and the vessel and cargo were condemned to the captors in a vice-admiralty court in the West Indies, and on appeal to the court of appeals in England the judgment was affirmed. Sir William Grant, who pronounced the opinion of the court, observed that the slave trade, being abolished by both England and the United States, the court was authorized to assert that the trade, abstractly speaking, could not have a legitimate existence and was *prima facie* illegal upon principles of universal law. The claimant, to entitle him to restitution, must show affirmatively a right of property under the municipal laws of his own country; for if it be unprotected by his own municipal law, he can have no right of property in human beings carried as his slaves, for such a claim is contrary to the principles of justice and humanity. (1 Kent's Com., 197.)

This claim is not supported, therefore, by the facts or the law so as to authorize Congress to make provision for its payment.

WILLIAM H. SEWARD.  
SOLOMON FOOT.

FEBRUARY 2, 1858.

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### THIRTY-SEVENTH CONGRESS, SECOND SESSION.

December 18, 1861.

[Senate Report No. 3.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred so much of the President's message as relates to any claim of the British Government on account of the detention of the ship *Perthshire*, have had the same under consideration, and now report:

The President, in his annual message, invited the attention of Congress to the correspondence between Her Britannic Majesty's minister accredited to this Government and the Secretary of State, relative to the detention of the British ship *Perthshire*, in June last, by the

U. S. S. *Massachusetts*, for a supposed breach of the blockade. In the opinion of the President this detention was occasioned by an obvious misapprehension of the facts, and as justice requires that we should commit no belligerent act not founded in strict right, as sanctioned by public law, he recommended that an appropriation be made to satisfy the reasonable demand of the owner of the vessel for her detention.

It appears from the correspondence that the British ship *Perthshire*, belonging to William Gray, was chartered by a merchant in Liverpool, in March last, to proceed in ballast from Grimsby to Pensacola, and there load a cargo of timber for the United Kingdom, the charterer, however, having his option, through his agent at Pensacola, of ordering the ship to Mobile to load cotton to Liverpool.

The *Perthshire* sailed from Grimsby in March last, and on the 13th of May was making for the harbor of Pensacola when she was boarded by an officer of the U. S. ship *Sabine*, and her captain was warned that Pensacola was blockaded, but informed that Mobile was not blockaded. The ship then proceeded to Mobile, where she arrived on the 14th of May, twelve days before that port was blockaded, and loaded a cargo of cotton for Liverpool. The blockade was established on the 26th of May. On the 30th the ship left the harbor of Mobile, and was boarded by an officer of the U. S. S. *Niagara*, who passed her by order of his superior officer, Capt. W. W. McKean, U. S. N., as the fifteen days allowed by the President of the United States for neutral vessels to depart had not expired.

The ship proceeded on her voyage until the 9th of June, when she was boarded and seized as a prize by order of Commander M. Smith, of the U. S. S. *Massachusetts*, a prize crew was placed on board, and she was taken back to the blockading squadron. Captain McKean, the officer commanding the squadron, stated to Commander Smith that the *Perthshire* had left Mobile within the time allowed by the President's proclamation, and that he "considered the capture illegal, as, by order of the Navy Department, no neutral vessel not having on board contraband of war was to be detained or captured unless attempting to leave or enter a blockaded port after the notification of blockade had been indorsed on her register." Captain Adams, of the *Sabine*, stated that at the time the *Perthshire* was boarded from his ship and ordered off from Pensacola there was no blockade of Mobile. Captain McKean accordingly directed Commander Smith to release the *Perthshire*, and to replace such provisions and stores as might have been used by the prize crew, which was done.

On the arrival of the *Perthshire* at Liverpool Mr. Gray, her owner, addressed a memorial to Earl Russel, Her Britannic Majesty's secretary of state for foreign affairs, requesting his lordship, through the British minister at Washington, to bring the case before the Government of the United States, and to present a claim for £200, being twelve days' freight at the rate at which she was chartered.

This claim was accordingly presented by Lord Lyons to the Secretary of State of the United States, who referred the subject to the Secretary of the Navy for information. On the receipt of a report of the facts in the case, Mr. Seward addressed the following letter to Lord Lyons:

DEPARTMENT OF STATE,  
Washington, October 24, 1861.

MY LORD: Your letter of the 11th of October last, presenting the claim of Mr. William Gray, owner of the British ship *Perthshire*, for damages incurred by the

detention of that vessel by the blockading squadron of the United States, was referred by me to the Secretary of the Navy for information upon the subject.

I have now received the answer of the Secretary of the Navy thereupon, which fails to show me that the detention of the *Pertshire* by Commander Smith, commanding the U. S. S. *Massachusetts*, was warranted by law or by the President's proclamation instituting the blockade, although I am satisfied that that officer acted under a misapprehension of his duties and not from any improper motive. It will belong to Congress to appropriate the sum of £200, claimed by Gray, which sum seems to me not an unreasonable one. The President will ask Congress for that appropriation as soon as they shall meet, and he will direct that such instructions shall be given to Commander Smith as will caution him against a repetition of the errors of which you have complained.

I avail myself of this opportunity to renew to your lordship the assurance of my high consideration.

WILLIAM H. SEWARD.

Right Hon. Lord LYONS, *etc.*

On these facts the committee report a bill for the payment of the sum claimed by the British Government in behalf of Gray and recommend its passage.

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March 10, 1862.

[Senate Report No. 21.]

Mr. Sumner submitted the following report:

The Committee on Foreign Relations, to whom was referred a message from the President of the United States, transmitting a correspondence concerning the seizure of the Spanish bark *Providencia*, having had the same under consideration, beg leave to report:

The President, in his special message of January 24, called attention to a claim of the Spanish Government for damages sustained by the owners and crew of the *Providencia*, a Spanish vessel, seized on her voyage from Habana to New York by a steamer of the United States blockading squadron and subsequently released, and he recommended the payment of the claim.

It appears from the correspondence submitted that on the 11th of December, 1861, Señor Don Gabriel Garcia y Tassara, envoy and minister plenipotentiary of Her Catholic Majesty, addressed a letter to the Secretary of State of the United States calling his attention to the illegal seizure of the Spanish bark *Providencia*, Capt. Don Juan Viret, on his voyage from Habana to New York in November, 1861, by the *Alabama*, a steamer of the United States blockading squadron.

The seizure was made because the *Providencia* had no papers, they having been taken by the mate on board of the steamer *Monticello*, also of the United States blockading squadron, four days previous. A storm separated the two vessels, the *Monticello* carrying away the mate and the papers of the *Providencia*, which was consequently taken as a prize and finally sent to New York, where she arrived on the 24th of November. After investigation she was delivered to the Spanish consul, and her captain presented a claim for damages suffered by the rigging and sails of the vessel while held as a prize and for the detention of himself and crew.

These damages, as estimated by Captain Viret, amounted to \$3,105, but the Spanish minister proposed the appointment of a competent person to examine and report on them. This proposition was accepted by Mr. Seward, who referred the case to the Secretary of the Navy, and Mr. Welles appointed as referee Moses Taylor, esq., an eminent

merchant of New York. The Spanish minister agreed to this selection, and Mr. Taylor, after an examination of the evidence and a survey of the vessel, submitted the following award:

In the case of the Spanish bark *Providencia*, submitted to me as referee by the Secretary of the Navy of the United States on the one part, and by his excellency Señor Don Gabriel G. Tassara, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, on the other part:

From the documentary evidence and protest submitted to me in this case: from the examination of the log book of the *Providencia*; from the evidence produced by Capt. Juan Viret, her master, assisted by the vice-consul of Spain at this port, and from the survey held upon the vessel, her sails, hull, tackle, and apparel by experts appointed by me for that purpose, I award that compensation be made by the United States to the bark *Providencia*, her owners, master, or assignees, for damages and detention as follows:

For cost of new sails .....	\$706.00
Less deduction for old sails .....	33.00
	<hr/>
	673.00
For braces and running rigging .....	120.00
For blocks .....	15.00
For bell .....	21.00
For damage to hull and standing rigging .....	355.08
For expense of discharging ballast in absence of crew .....	39.60
For wages of master, officers, and crew, and board of mates .....	278.23
For detention of vessel twenty days, at \$50 per day .....	1,000.00
	<hr/>
	2,501.91

Twenty-five hundred and one dollars and ninety-one cents liquidated damages.

MOSES TAYLOR, *Referee*.

NEW YORK, January 11, 1862.

Captain Viret, representing the Spanish bark *Providencia*, her owners, officers, and crew, having presented to the referee, through the vice-consul of Spain, a further claim for the remuneration considered equitable for himself, his officers, and crew, in full satisfaction of damages and inconveniences arising from the detention and removal and the consequence thereof, I am of opinion, and I recommend that the same be allowed in addition to the award of \$2,501.91, as an act of courtesy on the part of the United States, and as in full and final settlement of all claims and damages arising from the detention of said bark *Providencia*, her officers, and crew, viz:

To the master the sum of .....	\$100
To the mate .....	40
To the cook and mariners (15), at \$10 each .....	150
	<hr/>
	290

\$290.

MOSES TAYLOR, *Referee*.

NEW YORK, January 11, 1862.

In view of the facts presented, your committee follow the President in his recommendation of the appropriation of the amount of the award of the referee, and they report a bill for that purpose.

#### FORTIETH CONGRESS, SECOND SESSION.

June 16, 1868.

[Senate Report No. 130.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Stephen G. Montano, a citizen of Peru, with the accompanying

papers, have had the same under consideration and ask leave to submit the following report:

This case arises under the report of the mixed commission authorized by the convention of January 12, 1863, between the United States and the Republic of Peru, for the settlement of the pending claims of the citizens of either country against the other. An act of Congress was passed on the 3d of March, 1863, to provide for the appointment of commissioners according to the terms of this convention, and E. George Squier and James S. Mackie were appointed on the part of the United States; Santiago Tavera and Felipe Barriga on the part of Peru. The commission thereafter proceeded to consider the cases brought before them, sitting at Lima, in Peru, and on the 27th of November, 1863, they made their report.

There were various cases before the commission. Of these, 19 were claims of citizens of the United States on Peru and 4 were claims of Peruvian citizens on the United States. By the report of the commissioners it appears that award was made in favor of citizens of the United States in 8 cases for sums amounting in all to \$67,197.23, while there were only 2 awards in favor of the Peruvian claimants on the United States. The citizens of the United States have all been paid by the Peruvian Government in coin. Of the 2 Peruvian claims, 1 was that of Carmen Teojel, whose losses were paid by our Government "en moneda de plata de los Estados Unidos o su equivalente," in silver money or its equivalent, amounting, with interest, to \$1,170. The other Peruvian was Stephen G. Montano, whose case is still unsettled and whose petition for relief brings the matter before Congress in its present shape.

There is no question as to the main facts of the case, which are substantially as follows, viz: That on and prior to the 3d day of January, 1851, Montano was the owner of the bark *Eliza*; that on that day his vessel was lost in the bay of San Francisco through the carelessness of a licensed California pilot; that he instituted suit against the Pilot Association of California, to which this pilot belonged, and which was by law responsible for the neglect of its members, in the United States court for the northern district of California, and that some time in 1851 judgment was rendered in his favor for \$24,151.29, and that the marshal who was directed to execute the decree made a return of "no property found," although the laws of California required the pilot association to execute good and sufficient bonds for the performance of its duty. The mixed commission were unable to agree on this case, and it was referred to the umpire, Gen. P. A. Herran, according to the rule prescribed in the convention for such cases. The questions propounded to him were two:

Is the claim of Stephen G. Montano against the United States valid?

If so, for what amount?

The umpire in his decision discusses at some length the question whether the United States is responsible for the failure of the State of California to execute its laws, and for the insolvency of the private corporation, a question which had been the subject of diplomatic correspondence between our Government and that of Peru. He decides it in the affirmative, and awards Montano the amount of the original judgment which he recovered in the case, with interest from the date of the judgment to the time of the award. His words are:

Therefore I decide that the claim of Stephen G. Montano against the United States is valid for the sum of \$24,151.29, with interest at the rate of six per centum per annum from the 2d day of September, 1851, payable all in current money of the United States.

The decision of the umpire was pronounced in the Spanish language, as is certified by General Herran himself, by Domingo Rada, secretary of the commission, and by H. R. de La Reintrie, the solicitor of the United States before the commission, and the words fixing the payment were "pagadero todo en moneda corriente de los Estados Unidos." A discussion somewhat philological in character has arisen as to the true meaning of these words, Mr. Hunter, the Assistant Secretary of State, giving to them a latitude that would cover greenbacks, while Mr. de La Reintrie would interpret them as meaning coin. It is difficult to say that the word "moneda" in Spanish does not mean money in English, although the greater use of coin in Spanish countries may lead the people there to associate with this general term the idea of coin. In six Spanish dictionaries "moneda" is defined "pieces of gold, silver, or copper, stamped with the arms of a prince of state," but we learn from some of the same dictionaries that coin is "moneda acuñada," or coined money, thus giving to the term money a more general sense.

The term money in the English language has unquestionably broadened in its application. Dr. Johnson, in his dictionary, defines it to be "metal coined for the purposes of commerce." This definition is as strong and exclusive as any in the Spanish dictionaries. The following example from Locke confirms this definition: "Money differs from uncoined silver in that the quantity of silver in each piece of money is ascertained by the stamp it bears, which is a public voucher." Webster, in his dictionary, begins by recognizing money as the synonym of moneda or moneda, and then gives the following definition:

Money. 1. Coin: Stamped metal; any piece of metal, usually gold, silver, or copper, stamped by public authority and used as a medium of commerce.

2. Bank notes or bills of credit, issued by authority, and exchangeable for coin or redeemable, are also called money, as such notes in modern times represent money, and are used as a substitute for it.

Worcester, after mentioning the following foreign synonyms, Italian moneta, Spanish moneda, French monnaie, thus defines money:

1. Stamped metal, generally gold, silver, or copper, used in traffic or as the measure of price; coin.

2. Cash generally: any current token or representative of value, as bank notes exchangeable for coin; notes of hand, accepted bills on mercantile houses, drafts, etc.

And in a note he says:

Money, originally stamped coin, is now applied to whatever serves as a circulating medium, including bank notes and drafts, as well as metallic coins.

The French equivalent, "monnaie," is defined by the standard authority, the Dictionary of the Academy, to be—

Toute sorte de pièces de metal, servant au commerce, frappées par autorité souveraine et marquées au coin d'un prince ou d'un état souverain.

Papier monnaie, papier créé par le gouvernement pour faire office de monnaie. Monnaie dans au sens plus parti culier se dit des petites especes d'argent ou de billon.

If we trace the derivation of the word from the Latin, we find "Moneta" a surname of Juno, then applied to her temple at Rome, and then, as that temple was used as a mint, to the money coined there; hence the word in ancient times seems to have meant strictly "coin."

The award to the citizens of the United States, eight in number, were made payable—four "in the current money of Peru," one "in the current money of the country," one "in current money," and two in

"pesos fuertes," (hard money). These were all paid by the Peruvian Government in coin. The award now under consideration being made by a Peruvian, his words, "current money of the United States," might mean "current coin of the United States," by a reasonable construction. In the uncertainty which exists as to the true meaning, as used by the umpire, the committee have been disposed to find some other grounds for their decision, and here they have been impressed by several considerations:

In the first place, it seems that the essential equity of the case is with the petitioner. His claim is based on a judgment pronounced in his favor by the district court of the United States, in 1851. Had he recovered what he was justly entitled to at that time, he would have received upwards of \$24,000 in coin or its equivalent. This he was prevented from receiving through the negligence of the State authorities of California, or of an officer of the United States, without fault of his own. This judgment was taken as the basis on which the umpire founded his decision. The correctness of the judgment was acknowledged and Montano was allowed its amount with interest. When he received payment gold was almost at its highest point, and he received the equivalent of \$15,000 in gold, or \$9,000 less than he was justly entitled to more than twelve years before.

Again, by the terms of the convention, payment was to be made, by each Government, of such claims as the commission allowed within one month after it received notice of the award, or interest was to be paid for the delay. This is construed by the Secretary of State as follows:

It gave the United States, in effect, the option of selecting the time when it would pay, under the condition of a stipulated rate of damages for postponing payment.

In the present case, the notice of the award was received before the 23d of December, 1863, and on that day the report of the commissioners was transmitted to Congress. By that time, and during the ensuing month, gold was ranging from 145 to 150. Had Montano been paid then, he would have received the equivalent of nearly \$30,000 in gold. As it was, payment was delayed till the 30th of June following, when he received a draft on the assistant treasurer in New York for \$42,909.36. If he had exercised the utmost diligence, he could not have presented it till the next day, the 7th of July, 1864, when, from the operation of special causes, gold stood at 285, the very highest point it reached during the war. It was actually presented and paid on the 11th of July, when gold was 284. In fact, then, the United States, using an irredeemable currency, in the exercise of the option claimed above as to the time of payment, waited till this currency reached the lowest point of depreciation, and seized that opportunity to pay its creditor. According to this construction, our Government might have paid him in currency worth ten cents on a dollar or less, provided, only, that some temporary necessity obliged us to use it as money in this country. It is evident that the allowance of interest is no compensation for the damage inflicted by this delay.

There is an illustrative incident not unworthy of mention. General Herran, the umpire, from the ambiguity of whose language the discussion arose, has declared a willingness to explain his meaning if requested by both Governments. The Peruvian Government signified its disposition to accept this solution of the difficulty, but the United States refused to join the request. Mr. Smith, the exami-

ner of claims for the Department of State, in expressing himself against this proposition, remarks:

If, because we had a different kinds of "current money" in the United States, we may be supposed to derive an advantage from the election to pay in one kind rather than another, it is an advantage which I think there is no motive to surrender.

This action seems to place the United States in the position of taking advantage of an accidental ambiguity in the language of the award to deny the petitioner the money to which he is justly entitled, and if "we have different kinds of 'current money' in the United States," comity to a friendly nation would seem to require that its subjects should be paid in that kind which is most convenient to them.

All the other awards made by the commission were paid in coin, though, as has been seen, the language of the various decrees was different. Our countrymen have all been paid in coin. Shall this Peruvian be compelled to receive payment in greenbacks, and that, too, when they were worth only about a third of their nominal value? If he is thus compelled, he is the only claimant under the commission who does not receive a full compensation. The justice done to our own citizens seems to establish a rule for this single Peruvian.

It may be observed also, as has been stated above, that the commission sat in Lima, and that the award in the case of Montano was made in Spanish. Though not expressly required to be paid in Peru, yet it is not unreasonable to suppose that it was to be paid in money which would have a value there. Our ministers abroad are not subject to the losses of a depreciated currency. They receive their salaries in coin. The reason for this rule, in their case, seems applicable to the present petitioner.

The committee report a bill, in which they give him the difference between the amount which he received and that to which he was entitled, with interest from the 11th of July, 1864, to the date of payment, both principal and interest payable in coin.

#### FORTY-FIRST CONGRESS, SECOND SESSION.

February 22, 1870.

[Senate Report No. 49.]

**Mr. Sumner made the following report:**

The Committee on Foreign Affairs, to whom was referred the memorial of E. Dickelman, a Prussian subject, asking that he might receive indemnity, or that his claim against the Government of the United States for damages suffered by the action of the military authorities at New Orleans in the year 1862 might be referred to the Court of Claims for adjudication, beg leave to report:

That from the memorial and accompanying papers it appears that after the taking of New Orleans from the rebels in 1862, the President of the United States, on the 12th day of May of that year, by proclamation, declared that that port was open to commerce, and the Secretary of the Treasury issued rules and regulations in relation to the trade, prohibiting only articles contraband of war.

That on the 29th day of August the Prussian ship *Essex*, owned by the memorialist, arrived at the port of New Orleans, discharged her cargo, and on the 2d day of September commenced taking in a cargo

of outward-bound freight; that her cargo was fully completed on the 16th of September; that among her cargo were ten packages of bullion, silver plate, coin, etc.; that on that day the captain applied for a clearance, which was refused, unless the captain would land the ten packages above referred to. The captain said he could not do so, as his bills of lading had been issued after the packages had been taken on board, under the supervision of a custom-house official, and that without a surrender of the receipts he could not be discharged from liability. That on the 29th of September a custom-house officer came on board and produced to the captain the receipts and bills of lading for two of said packages, which were surrendered to him. That on the 1st of October a sergeant and two soldiers, accompanied by a custom-house officer, came on board and presented an order from the shipper for two other cases. That the captain refused to deliver up the cases without surrender of the bill of lading. That the keys of the hatches were in possession of a custom-house officer, who opened the same, and the packages were taken out. That on the 6th day of October a custom-house officer came on board and informed the captain that the ship would be cleared, and, in accordance with such notification, on the 7th of October a clearance was issued. That these proceedings were under the direction and control of the military authorities of the United States, then in possession of New Orleans. That the general in command believed, and acted upon such belief, that the property contained in said packages was the property of persons, citizens of the United States, in open rebellion against the Government; that the articles were contraband of war or liable to confiscation.

The ship was detained for nineteen days in the manner above stated, and subjected, as alleged, to very great losses. No claim is made for the cases so taken, only for the detention of the ship.

Your committee has made this brief synopsis of the main facts alleged, without any desire or intention to express any opinion upon the merits of the controversy or the justice of the claim. It has been rejected at the State Department.

The Government of Prussia has requested that the claim of the memorialist shall receive a judicial investigation, claiming that treaty obligations between the two countries require such a reference.

Your committee, believing that the United States are bound in fulfillment of its obligations to give the memorialist a hearing before our own tribunals, have unanimously directed me to present the accompanying bill and recommend its passage.

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**April 22, 1870.**

[Senate Report No. 116.]

**Mr. Sumner made the following report:**

The Committee on Foreign Relations, to whom was referred Senate bill No. 535, for the relief of Kenneth Mackenzie, have had the same under consideration and now report.

Mr. Mackenzie is a Queen's counsel of Toronto in Canada, and was retained by the United States as counsel for the defense of certain Fenians, indicted for treason in Canada, in the latter part of October, 1866. For this service he has already received \$5,000. A demand for

a further allowance was dismissed by Mr. Seward, while Secretary of State, and then again by the present Secretary of State, who held himself bound by the decision of his predecessor. The bill now before this committee was introduced by a Senator who declared that his purpose was to secure a hearing for Mr. Mackenzie. It allows \$44,000, in addition to the sum already received.

The committee examined a considerable mass of papers filed by Mr. Mackenzie in support of his claim. They also invited the opinion of the Secretary of State on the propriety of this additional allowance. His reply is hereby given, with the report of the examiner of claims at the Department of State:

DEPARTMENT OF STATE,  
*Washington, March 1, 1870.*

SIR: I have the honor to acknowledge the receipt of your letter of the 22d ultimo, inclosing a bill for the relief of Kenneth Mackenzie, esquire, with a request for my opinion on the character and propriety of Mr. Mackenzie's claim. Having no personal knowledge on the subject, I inclose you, by way of reply, a copy of an opinion given to my predecessor, Mr. Seward, by the examiner of claims of this Department. Mr. Smith informs me that, by the direction of Mr. Seward, at the urgent solicitation of Mr. Mackenzie, he reexamined the subject, and after consultation with the Attorney-General, Mr. Stanbery, consented to recommend the payment of \$5,000 in gold as a liberal compensation to Mr. Mackenzie, rather because of the awkwardness of a controversy between this Government and a foreigner employed as counsel, than from satisfaction of the justice to the United States of allowing so large a sum.

In answer to your further inquiry, I have to state that G. and H. B. Murphy, esquires, of Toronto, were employed as attorneys and associate counsel in preparing and conducting the defense of the prisoners, for whom Mackenzie also appeared. Those gentlemen were paid for their expenses and services in those cases the sum of \$5,170, and make no further claim. The larger portion of their bill was made up by attorneys' fees, represented to be taxable costs in Canada; the remainder, \$2,000, it is believed, was charged and allowed for services as counsel.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. CHARLES SUMNER.

*Chairman of the Committee on Foreign Relations, United States Senate.*

#### COMPENSATION OF K. MACKENZIE, ESQ., AS COUNSEL FOR FENIAN PRISONERS AT TORONTO.

BUREAU OF CLAIMS, *August 7, 1877.*

Mr. Mackenzie, upon the retainer of our consul at Toronto, defended upon their trials 41 American citizens accused of participation in the Fenian invasion of Canada. Seven of the cases went to the court in banc upon exceptions taken at the trial, and Mr. Mackenzie argued them.

It appears that the sum allowed by the Canadian Government to I. H. Cameron, esq., the senior counsel for the prosecution of these and other prisoners accused of the same offense, is \$5,000.

Caleb Cushing, esq., having during my absence had referred to him the bill for attorneys' services in these cases, I consulted with him in respect to the proper compensation to be offered Mr. Mackenzie; and we are of the opinion that the sum allowed to Mr. Cameron by the Canadian Government may be taken as a proper standard of comparison. The counsel for the prosecution was engaged not only in the same trials as Mr. Mackenzie, but in many others. The precise number of the latter is not known to us. Mr. Mackenzie states, however, that at the time of his retainer the Fenian prisoners confined in the Toronto jail was 93 or 94 in number. Mr. Thurston, our consul at Toronto, referring to the amount of Mr. Cameron's fee as a standard, suggests \$3,000 as proper compensation for Mr. Mackenzie. The result of inquiries instituted by Mr. Thurston goes to indicate that according to the practice and views of professional compensation prevailing among the Canadian bar, this sum is an adequate fee.

I infer that the recommendation by Mr. Thurston of the payment of \$3,000 is founded upon the proportion between the quantum of service rendered by Mr. Mackenzie and that rendered to the prosecution by Mr. Cameron, the quality of the two being taken as the same. In other words, that the number of cases defended by the one, or the time employed in them, is to the case prosecuted, or the time employed, by the other, in the ratio of three to five, or about that ratio.

With this understanding I concur, as does Mr. Cushing, in advising that \$3,000 is a proper sum to be paid as counsel fee to Mr. Mackenzie.

I may add, that from an examination which I made of the cases which went before the court in banc, and which may well be supposed to be those involving the most serious professional labor and skill, I think that the trials involved no legal questions of difficulty, but, on the contrary, were rather remarkably simple and easy. There was, from the nature of the case, very little diversity in the questions arising. It was very like trying the same case forty-one times. This is true as well in relation to the questions of fact as to those of law.

E. PESHINE SMITH,  
*Examiner of Claims.*

Under these circumstances the committee have no hesitation in recommending that the bill be indefinitely postponed.

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April 22, 1870.

[Senate Report No. 117.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, having under consideration the case of Baron Creutz, of the Netherlands, beg leave to report:

From papers communicated to the Committee on Foreign Relations by the Secretary of State, on the application of Mr. Mazel, minister resident of the Netherlands at Washington, it appears that Baron Creutz is a first lieutenant of artillery in the service of the King of the Netherlands, and residing at Nimwegen, and that he claims new United States bonds for bonds destroyed or lost by fire.

A fire broke out at his residence May 28, 1868, when the building was partially destroyed. Two witnesses, personally known to the notary, acting on the indication of Baron Creutz, found certain remains of bonds and a shattered box and a quantity of paper under that part of the second floor where was deposited the box containing, as is alleged, the United States bonds. These remains, on examination before a notary, were recognized as belonging to bonds originally received by the baron on his marriage, and specified in an inventory drawn up before a notary January 2, 1868, where, among others, are the United States bonds alleged to have been destroyed. No remains of these were recognized, but there was a mass of paper so injured by fire and water that all trace of its original character was obliterated.

Baron Creutz declares on oath that in the above-mentioned box destroyed by fire were four United States bonds of the loan payable 1882, Nos. 107, 108, series 4, 41843 series 3, and 10943 series 4, being the bonds specified in the inventory on his marriage.

Under these circumstances it seems only equitable that the Secretary of the Treasury should be authorized to hear the case of Baron Creutz, and, if satisfied of his loss, and on proper security against the presentation of the original bonds, to issue new bonds as a substitute for those destroyed.

The committee report such a bill.

**FORTY-FIRST CONGRESS, THIRD SESSION.**

**January 19, 1871.**

[Senate Report No. 296.]

Mr. Sumner made the following report:

The Committee on Foreign Relations having had under consideration certain papers referred to them by the Secretary of State, concerning the application of George Sydney Clement, a British subject, for indemnity on account of a United States bond destroyed by fire, beg leave to report:

On the 6th of May, 1870, the Department of State transmitted to the Committee on Foreign Relations a communication covering a note from the British minister at Washington, who stated that application had been made to him by Mr. George Sydney Clement, a British subject residing in London, with regard to a certain 5-20 6 per cent coupon bond of the United States, for \$1,000, numbered 2221, and of the fourth series, under the act of February 25, 1862, alleged to have been destroyed by fire.

The minister requested the Secretary of State to recommend to Congress such measures as would authorize the Secretary of the Treasury to issue a new bond in the place of that so destroyed.

By direction of the committee, the chairman wrote to the minister stating the necessity of evidence sufficient to prove the alleged loss by fire.

On the 5th of July the Secretary of State communicated to the committee certain affidavits, properly attested, which had been obtained in accordance with the above suggestion, and which are in substance as follows:

Abraham Morse, of Bristol, England, deposes that on the 12th January, 1869, he was the sole and bona fide owner of a United States 6 per cent 5-20 bond of the loan of February 24, 1862, for \$1,000, numbered 2221, and he believes of the fourth series, with coupons for the interest to become due on and from the 1st of May, 1869. That on the above 12th January, he handed the bond to Henry Stevenson, of Bristol, to be by him forwarded to George Sydney Clements, esq., 38 Throgmorton street, London, a stockbroker, to be held by him as security for certain transactions.

Henry Stevenson, of Bristol, a stockbroker, deposes that he received the above bond, carefully inclosed it in a letter and addressed it to "G. S. Clement, esq., 38 Throgmorton street, London, E. C." He caused the letter to be registered and posted the same day in Bristol.

The original post-office receipt, stamped "North St., Bristol, Ja. 12, 70," and signed by the postmaster, for the letter directed as above, is presented with the affidavit.

Mr. Stevenson testifies further that Mr. Clement purchased a 5-20 bond of the same value as the above-mentioned bond, near the 17th January, 1870, for the above Mr. Morse, in lieu, as Mr. Clement told him, of the bond Mr. Stevenson had mailed, and which had been burned.

Concerning the destruction of the bond, Louisa Standen, assistant housekeeper of Mr. Clement, deposes as follows:

On the 13th January, 1870, she received, at 38 Throgmorton street, London, from a postman, a registered letter addressed to Mr. Clement, and bearing the Bristol postmark. It was not convenient for her at

the moment to put the letter into Mr. Clement's office, and she placed it on a dustpan and went up stairs to clean an office; when she came down, totally forgetting that she had placed the letter on the dustpan, she threw the contents of the pan into the fire, by which the letter was consumed.

Finally, Mr. Clement deposes that he has never received the above letter or the bond contained therein, and that he believes the letter contained the bond described above, and that both letter and bond were burned, as Louisa Standen deposes.

He says, also, that on or about the 17th day of January, 1870, he purchased, on behalf of Mr. Morse, another 5-20 bond of the same value, and in lieu of the one destroyed, and was thereby subrogated to Mr. Morse's right to a new bond.

Under these circumstances the committee report a bill for Mr. Clement's relief.

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January 19, 1871.

[Senate Report No. 297.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, having had under consideration certain papers referred to them by the Secretary of State concerning the application of Christine Mahler, a Prussian subject, for indemnity on account of United States bonds destroyed by fire, beg leave to report:

On the 10th December, 1870, the Department of State transmitted a communication to the Committee on Foreign Relations, covering a note and accompanying papers from Baron Gerolt, the minister of North Germany at Washington, concerning the reissue of three one-hundred dollar United States coupon bonds to one Christine Mahler, a resident at Brätz, and a subject of Prussia, in lieu of three bonds of equal value alleged to have been destroyed by fire.

Copies of translations of depositions taken before the royal district court of Neustadt and Hanover were submitted to the committee, and their tenor is as follows:

Conrad Stünkel, resident in Obermahle, district of Burgwedel, a cousin of Mrs. Mahler, deposes that in 1866 he bought for the latter from one Blumenthal, a banker in Hanover, three United States bonds of Series III, payable in 1882, of \$100 value each, numbered 20745, 26740, and 36331, respectively.

Jacob Gans, banker at Hanover, and successor to the firm of Blumenthal, deceased, deposes that he has examined the account books of his predecessor and found therefrom that on the 4th December, 1866, Blumenthal sold to Conrad Stünkel three 6 per cent bonds dated Washington, May 1, 1862, of the issue and numbers above stated.

Friedrich Ridder, resident in Brätz, testifies that on June 23, 1868, his sister-in-law, Christine Mahler, a seamstress, rented part of his house, and that on this day, while she was absent, the house was struck by lightning, and being thatched with straw, took fire and burned to the ground. He says further, that he knew certainly that Mrs. Mahler possessed bonds of the United States, and believes them to have been burned with the building.

Ridder's testimony is supported by Mr. Voigts, of Brätz, who was present at the destruction of the house, and was told by Mrs. Mahler,

both long before and after the burning, that she possessed certain United States bonds.

Diedrich Wolkenhauer, resident at Brätz, deposes that Stunkel handed three United States bonds to Mrs. Mahler in his presence, and the latter remarked that they cost 300 thalers. He testifies to the destruction of the house, as above stated, while Mrs. Mahler was absent.

Finally, Christine Mahler herself testifies that none of her property was saved from the fire which consumed Ridder's house; that in a clothespress in her room she kept three United States coupon bonds (as before described), and that she firmly believes these bonds were burned together with the press; and that the coupons due May 1, 1868, had been paid, the remainder being destroyed with the bonds.

Under the circumstances the committee report a bill for her relief.

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#### FORTY-THIRD CONGRESS, FIRST SESSION.

May 28, 1874.

[Senate report No. 390.]

Mr. Hamlin submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 535) for the relief of Robert Murray, jr., have had the same under consideration, and report:

That there was levied and collected at the port of New York, in the years 1867-68, as tonnage dues upon the Haitian brig *Margaretta*, a vessel belonging to and owned by citizens of the Republic of Haiti, the sum of \$1,378.25. By treaty between the Haitian and United States Governments, proclaimed July 6, 1865, said vessel was exempt from such dues, and they ought not to have been collected. It appears, in a communication from the collector of the port of New York, that at the time when said tonnage duties were exacted and collected the collector had no knowledge of the existence of said treaty with Haiti. The said duties were collected under regulations of the Department of 1857, and the collector was not informed of the existence of said treaty until he received the regulations of the Department of 1869, exempting said vessel from tonnage duties; nor was the master or owner of the said brig aware of the existence of said treaty at the time said tonnage duty was exacted and paid, and no protest, therefore, against the payment of the same was made. The tonnage duties were exacted and paid from the fact that neither party knew of the existence of the treaty.

An appeal was made to the Secretary of the Treasury for a remission of the duties thus improperly and unlawfully exacted. The Secretary of the Treasury determined "that it had no power to refund the amount claimed, inasmuch, so far as now appears, no protest, as required by section 14, act of June 13, 1864, was made against the payment of these dues at any time during the long period in which they were exacted." The owners of the said brig having failed to make their protest the Secretary could not grant the relief asked for, but your committee believe that it was the duty of the Government not to have exacted or collected said tonnage dues, as such was the law; they therefore recommend the passage of the bill, with an amendment.

[See p. 517.]

## FORTY-SIXTH CONGRESS, SECOND SESSION.

February 18, 1880.

[Senate Report No. 285.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 850) to provide a commission for the adjudication of damages to the Norwegian bark *Atlantic* by collision with the United States steam sloop of war *Vandalia*, and for payment of any award made by said commission, have had the same under consideration, and report:

That the owners of the Norwegian bark *Atlantic* claim of the United States compensation for injuries to their vessel, and for losses by her detention in the port of Lisbon for repairs, under the following alleged state of facts:

That the bark *Atlantic* was upon the high seas pursuing her voyage from the port of Oza, in Algeria, to the port of Leith, in Scotland, on the 31st of October, 1876, when she was hailed by the United States steam war sloop *Vandalia*, who sent out a boat to the *Atlantic* with a request for newspapers.

That some delay occurred because the officer from the *Vandalia* and the captain of the bark could not converse in the same language.

During this delay the vessels collided, and it is claimed by the captain of the bark, in a public protest that he made on his arrival at Lisbon, that his vessel was wholly without fault.

The Norwegian bark was so damaged by the collision that the *Vandalia* found it necessary to tow her into Lisbon, Portugal, where she could be repaired.

The officer in command of the *Vandalia* claims that his ship was without fault, and so reported to the Secretary of the Navy.

The claim for compensation appears to be made in good faith, and is so far supported by evidence that it requires impartial examination.

The King of Sweden and Norway has caused his minister to the United States to bring this subject to the attention of this Government, and to ask that some action be had by Congress by which a mode of adjusting this dispute may be provided.

There is no provision of law by which the United States can be sued in courts of admiralty, and ships of war are not subject to any proceeding in rem by persons who may sustain damages by their negligent or improper navigation.

The Norwegian minister suggests in his correspondence with the Secretary of State that his Government has provided by law so that suits may be brought against it in its own courts in such cases by persons who have unjustly sustained damages. He presents this as an additional ground for his request that Congress shall provide for a settlement of the claim of his countryman by impartial arbitration.

Your committee agree that this request is reasonable and proper, and report back the bill referred to them with a substitute therefor, and recommend its adoption.

[See p. 516.]

## FORTY-SIXTH CONGRESS, THIRD SESSION.

February 9, 1881.

[Senate Report No. 855.]

Mr. Kirkwood, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1834) to pay the creditors of the late Henry O. Wagoner, late consular clerk at Lyons, France, have examined the same, and report:

The merits of the bill are fully explained in the following letter from the Department of State:

DEPARTMENT OF STATE,  
Washington, March 26, 1880.

The Hon. HENRY M. TELLER,  
*United States Senate:*

SIR: In response to your request, in your recent interview at the Department, in reference to the affairs of Mr. Henry O. Wagoner, late a consular clerk at Lyons, France, I have the honor to communicate the following information:

Mr. Wagoner was appointed a consular clerk in 1873, and held a commission from the President in that capacity. The salary appropriated for that office is at the rate of \$1,000 a year. Mr. Wagoner was assigned to duty first at Paris, and subsequently at Lyons. So far as is known to the Department, he was an efficient and trustworthy officer. He died at Lyons on the 4th of March, 1878, after a lingering illness of consumption. The salary of a consular clerk, which was not more than was required for an economical living while in health, was quite inadequate to meet the necessities of a long and expensive sickness, and on his death it was found that he had accumulated debts to the amount of \$542.50. Of this sum a considerable part was advanced to him by the vice-consul then in charge at Lyons, and the remainder was incurred for maintenance and medical attendance. Upon application to Mr. Wagoner's father it was found that he was unable to meet these expenses, and they yet remain unpaid. The Department had no fund in its control from which they could be defrayed.

The case of Mr. Wagoner is believed to be somewhat exceptional in its character, and deserving the consideration of Congress. It is represented by the vice-consul that credit was given to Mr. Wagoner for necessities during his illness, in the belief that, under such circumstances, they would be paid for by the Government of which he was a representative, and application has repeatedly been made at the consulate for their payment, under this belief. The debts were incurred in the pressing necessities of a long illness, and not from Mr. Wagoner's carelessness or extravagance, and under circumstances which could not be met by the limited salary of his office. The deficiency was, as has been stated, made up in considerable part by the charity of his superior officer.

It is understood that Mr. Wagoner was not indebted to the United States at the time of his death.

I have the honor to be sir, your obedient servant,

JOHN HAY,  
*Assistant Secretary.*

The committee are of opinion that in view of the exceptional nature of this case, the peculiar circumstances under which the indebtedness of the deceased to French citizens was incurred, and the inability of his father to pay the same, the good name of our Government requires its payment from the public Treasury, and therefore recommend the passage of the accompanying substitute for the original bill.

[See p. 522.]

March 1, 1881.

[Senate Report No. 922.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the

message of the President relating to the claims of Spain against the United States, have had the same under consideration, and report as follows:

This subject has been considered in a variety of forms by the executive, legislative, and judicial departments of the Government, but no negotiation has been entered into between Spain and the United States to remove the difference between them, if any exists, as to the true meaning of the treaty.

The discussion before the tribunals of the United States has engaged the attention of a number of the best informed jurists and publicists of this country, and seems to have exhausted research into precedents and analogies. Nothing new remains to be said, it seems, on either side of the question presented, and it is time that a final decision was made and further controversy ended.

The precise question involved in this claim for relief is, whether the Government of the United States is bound by the treaty with Spain of the 22d February, 1819, to pay interest on claims allowed in favor of Spanish inhabitants and officers under the last paragraph of the ninth article thereof, which is in the following language:

And the high contracting parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas. The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida.

The message of the President, with the accompanying correspondence between the Spanish minister and the diplomatic representatives of the United States, relative to "the Florida claims," discloses a specific demand by the Government of Spain upon the Government of the United States for the payment of certain sums, as interest, on demands ascertained to be due to Spanish subjects under the ninth article of the treaty of February 22, 1819. Spain asserts that the payment of said sums of interest is required to complete the duty of the United States in the execution of its treaty obligations.

The President places the matter before Congress without any recommendation, and without any distinct intimation that Congress is the proper department of the Government to interpret as well as to execute the treaty—to determine the rights of Spain under the treaty and to provide for them. This is left to be inferred, if at all, from the silence of the President. In the opinion of the committee the President is the only functionary of the Government of the United States that has the constitutional right, acting through some diplomatic agent, to conduct a discussion with Spain on the subject of these claims. Congress can not engage in such discussion. It can not appoint an agent or commissioner for that purpose without the cooperation of the President. The reference of this question to Congress therefore can only be intended to indicate either that there is no question open between the two Governments, as to the duty of the United States, which admits of discussion; or else that Congress must decide whatever question may remain unsettled, without further discussion with Spain. The executive department has neither expressed to Congress nor to Spain, in the correspondence sent to the committee, its opinion of the duty of Congress in the premises; and the treaty-making power, which has plenary and sole jurisdiction to make treaties or to reform them, has not been invoked to remove any misunderstanding, if any exists, as to the meaning of the treaty of February, 1819, between the United States and Spain.

Spain, on its part, has apparently assumed an attitude of indifference as to the means that the Government of the United States may choose to employ to meet its demands, and simply asserts its right under the treaty to have interest paid to the claimants on their claims. The treaty is part of the supreme law of the land, and until it is revoked by some direct proceeding, or is abandoned, or is violated by Spain, it is binding on Congress; and Congress, in executing it, must obey it. Under such circumstances, if Congress has any duty to perform, no discretion can remain to it in respect of that duty, except merely as to the time and manner of performing it. It must observe the treaty so long as it is in force. It must accept Spain's construction of the treaty, and execute it by appropriating the money to pay the demands made by that Government; or it must, without a discussion with Spain as to the justice of its demands and of the construction of the treaty, refuse to accede to them.

In this attitude of this delicate question the committee feel that the action of Congress if adverse to the claims of Spain will not be received as a conclusive declaration of the Government of the United States that no further consideration of the demands of Spain is admissible, but will leave it open to Spain and the treaty-making power of the United States to expound or reform the treaty, and thus create the possibility of inharmonious action between the legislative department and the treaty-making power of this Government. It is the opinion of the committee that when the true construction of a treaty is in question between the United States and any other government it is the duty of the executive department to use its full and untrammelled privileges and rights of discussion and negotiation in the effort to reach a satisfactory understanding with such government before Congress shall intervene to declare the true construction of the treaty. If Congress should differ in the construction of the treaty with the Executive or treaty-making power of the Government of the United States, it can so declare when a proper occasion is presented, or it can revoke the treaty and free the Government from its obligations; but in doing this Congress would not be dealing directly with such foreign government. It would deal with and fix the policy of our own Government, which is its appropriate constitutional function.

It is manifestly unwise, if not improper, for Congress to declare in advance of any definite action of the Executive, or of the treaty-making power of the Government, that the construction placed by Spain upon the ninth article of the treaty of February, 1819, is true or false. Such a policy, if adopted as a general rule of action, would withdraw every such question from the control of the authorities provided by the Constitution for their consideration, and would subject our treaty relations throughout the world to extreme embarrassment. No American minister could know how to construe any treaty until the opinion of Congress had been first ascertained, nor could he discuss with any freedom the questions that frequently and unavoidably arise in consequence of the difficulties of the translation of treaties into different languages, and other questions of the construction of the language employed in treaties, in connection with the laws of nations. Entertaining these opinions of the respective duties of the executive department and of the treaty-making power and of Congress, it would be improper at the present for the committee to state their own opinions of the merits of the demand of Spain, which, according to the views of that Government, involves an international and not merely a domestic question.

If Spain and the United States differ in the construction of the treaty in the particular which has been so long under discussion before committees of Congress and the executive officers of the Government, and can settle that difference so as to impose further duties on Congress, it will doubtless be found willing to do all that is required by the interests and honor of the Government of the United States, and in keeping with the rights of the claimants.

Until some such duty is made apparent, Congress should not interfere to discuss or decide questions which, for the present at least, should be open to the consideration of the executive department, or of the treaty-making power, without embarrassment from any quarter.

The committee ask, therefore, to be discharged from the further consideration of this subject.

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[See p. 513.]

#### FORTY-SEVENTH CONGRESS, FIRST SESSION.

January 31, 1882.

[Senate Report No. 99.]

Mr. Lapham, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 90) to pay the creditors of the late Henry O. Wagoner, late consular clerk at Lyons, France, have examined the same, and report:

The merits of the bill are fully explained in a letter addressed to a member of this committee in the Forty-sixth Congress, as follows:

DEPARTMENT OF STATE,  
*Washington, March 26, 1880.*

SIR: In response to your request, in your recent interview at the Department, in reference to the affairs of Mr. Henry O. Wagoner, late a consular clerk at Lyons, France, I have the honor to communicate the following information:

Mr. Wagoner was appointed a consular clerk in 1873, and held a commission from the President in that capacity. The salary appropriated for that office is at the rate of \$1,000 a year. Mr. Wagoner was assigned to duty first at Paris, and subsequently at Lyons. So far as is known to the Department, he was an efficient and trustworthy officer. He died at Lyons on the 4th of March, 1878, after a lingering illness, of consumption. The salary of a consular clerk, which was not more than was required for an economical living while in health, was quite inadequate to meet the necessities of a long and expensive sickness, and on his death it was found that he had accumulated debts to the amount of \$542.50. Of this sum a considerable part was advanced to him by the vice-consul, then in charge at Lyons, and the remainder was incurred for maintenance and medical attendance. Upon application to Mr. Wagoner's father it was found that he was unable to meet these expenses, and they yet remain unpaid. The Department had no fund in its control from which they could be defrayed.

The case of Mr. Wagoner is believed to be somewhat exceptional in its character, and deserving the consideration of Congress. It is represented by the vice-consul that credit was given to Mr. Wagoner for necessities during his illness in the belief that, under such circumstances, they would be paid for by the Government of which he was a representative, and application has repeatedly been made at the consulate for their payment, under this belief. The debts were incurred in the pressing necessities of a long illness, and not from Mr. Wagoner's carelessness or extravagance, and under circumstances which could not be met by the limited salary of his office. The deficiency was, as has been stated, made up in considerable part by the charity of his superior officer.

It is understood that Mr. Wagoner was not indebted to the United States at the time of his death.

I have the honor to be, sir, your obedient servant,

JOHN HAY,  
*Assistant Secretary.*

Hon. HENRY W. TELLER,  
*United States Senate.*

In further confirmation of the propriety of the claim, the committee have received from the present Secretary of State, in answer to an inquiry addressed to him, a letter of which the following is a copy:

DEPARTMENT OF STATE,  
Washington, January 6, 1882.

SIR: Referring to a letter of the 21st of December ultimo, from the clerk of the Committee on Foreign Relations, relating to the matter of the indebtedness of Henry O. Wagoner, late a United States consular clerk, and requesting that the papers in the case, and such information as the Department had to give, be furnished you as a subcommittee appointed to consider the matter, I have now the honor to transmit herewith inclosed for such consideration copy of Report No. 855, Senate, Forty sixth Congress, third session, embodying a letter dated the 26th of March, 1880, from Mr. John Hay, then Assistant Secretary, which contains a correct and concise statement of all the information this Department is able to give in the matter, together with a recommendation that the necessary sum might be appropriated by Congress. I send this report in lieu of the papers, which are cumbersome, and from a study of which I feel sure nothing more could be elicited than is contained in Mr. Hay's letter. Should you, however, desire copies of the papers I shall take pleasure in having them prepared and sent to you.

I may say here that I agree fully with what Mr. Hay has written, and to his I cordially add my own recommendation that a sum for the payment of Mr. Wagoner's indebtedness be appropriated by Congress.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. ELBRIDGE G. LAPHAM,  
United States Senate.

The committee are of the opinion that in view of the exceptional nature of the case, the peculiar circumstances under which the indebtedness of the deceased to French citizens was incurred, and the inability of his father to pay the same, the good name of our Government requires its payment from the public Treasury, and therefore recommend the passage of the accompanying bill.

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[See p. 512.]

April 25, 1882.

[Senate Report No. 496.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 576) to provide for the adjudication of damages to the Norwegian bark *Atlantic* by collision with the United States steam sloop of war *Vandalia*, and for payment of the same, have had the same under consideration, and report:

That the owners of the Norwegian bark *Atlantic* claim of the United States compensation for injuries to their vessel, and for losses by her detention in the port of Lisbon for repairs, under the following alleged state of facts:

That the bark *Atlantic* was upon the high seas, pursuing her voyage from the port of Ozan, in Algeria, to the port of Leith, in Scotland, on the 31st of October, 1876, when she was hailed by the United States steam war sloop *Vandalia*, who sent out a boat to the *Atlantic* with a request for newspapers.

That some delay occurred because the officer from the *Vandalia* and the captain of the bark could not converse in the same language.

During this delay the vessels collided, and it is claimed by the cap-

tain of the bark, in a public protest that he made on his arrival at Lisbon, that his vessel was wholly without fault.

The Norwegian bark was so damaged by the collision that the *Vandalia* found it necessary to tow her into Lisbon, Portugal, where she could be repaired.

The officer in command of the *Vandalia* claims that his ship was without fault, and so reported to the Secretary of the Navy.

The claim for compensation appears to be made in good faith and is so far supported by evidence that it requires impartial examination.

The King of Sweden and Norway has caused his minister to the United States to bring this subject to the attention of this Government, and to ask that some action be had by Congress by which a mode of adjusting this dispute may be provided.

There is no provision of law by which the United States can be sued in courts of admiralty, and ships of war are not subject to any proceeding in rem by persons who may sustain damages by their negligent or improper navigation.

The Norwegian minister suggests in his correspondence with the Secretary of State that his Government has provided by law so that suits may be brought against it in its own courts in such cases by persons who have unjustly sustained damages. He presents this as an additional ground for his request that Congress shall provide for a settlement of the claim of his countryman by impartial arbitration.

Your committee agree that this request is reasonable and proper, and report back the bill referred to them with an amendment in the nature of a substitute therefor, and recommend its adoption.

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[See pp. 524, 528.]

#### FORTY-EIGHTH CONGRESS, FIRST SESSION.

February 20, 1884.

[Senate Report No. 206.]

Mr. Wilson, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the several petitions, papers, and documents in the case of Martin Kenofsky, submit the following report, accompanied by a bill, the passage of which is recommended.

Martin Kenofsky, a subject of the Emperor of Prussia, came to the United States in 1853, and in 1859 settled at Grenada, Miss., where he continued to reside until March, 1864, when he alleges he left his home in order to avoid conscription in the military service of the Confederate States. He was making his way to Memphis, Tenn., then in possession of the Union forces, having in his possession as the result of many years of toil in the line of his trade (that of a boot and shoe maker) \$4,992.50 in gold coin. While pursuing his way within the Union lines he was arrested by the military authorities of the United States, taken to Memphis, put in prison, and deprived of his gold coin. He was not tried for any offense, was soon after discharged, but his money was not restored to him.

On May 27, 1865, Kenofsky addressed a petition to Hon. E. M. Stanton, Secretary of War, stating his case and requesting a restoration of

his money. This was forwarded through Maj. Gen. C. C. Washburne, then in command of the United States forces at Memphis, with his indorsement thereon as follows, viz:

## HEADQUARTERS DISTRICT WEST TENNESSEE.

*Memphis, Tenn., May 27, 1865.*

Respectfully forwarded to the Secretary of War, with the remark that the facts in the within paper are accurately stated so far as I can ascertain. The gold taken was taken a short time before I took command at Memphis in April, 1864, and went into the hands of General Hurlbut, by whom it was taken away when he was relieved. I found Kenofsky in prison and in irons when I took command, and soon after released him and sent him out of the lines that he might return to Grenada, Miss. Federal officers who were in Grenada in 1863 assure me that he showed our officers and men great attention, and officers now occupying the post of Grenada assure me that it is known that he was always a friend to our Government.

I think he was roughly handled, probably more so than the facts would justify.

C. C. WASHBURN, E.  
*Major-General.*

With this indorsement the petition of Kenofsky reached Secretary of War Stanton, and was by him referred to Lieutenant-General Grant, with direction for him to require of General Hurlbut an explanation of the subject and a statement of the whereabouts of the gold.

In due course of official routine the following statement was received from General Hurlbut, viz:

*NEW ORLEANS, June 22, 1865.*

I have the honor to report on the within case, principally from memory, as the records of the Sixteenth Corps are not accessible to me.

Some time in March, 1864, a Jew cotton and gold dealer and smuggler was arrested by the provost-marshal's force at Memphis in the act of passing the lines south with a quantity of gold.

This was contrary to Treasury regulations, the orders of General Grant, and my own orders.

The case was reported to me by Capt. George A. Williams, first lieutenant, United States Infantry, then provost-marshal at Memphis. I directed the man to be imprisoned and tried, and ordered the gold to be confiscated to the use of the United States, all of which appears upon the records of the Sixteenth Army Corps.

The gold, the amount of which I can not now give, was sent, under my direction, by Captain Williams, to St. Louis or Chicago and converted into paper currency at proper premiums.

My headquarters were removed to Cairo. At that place the messenger in charge reported to me the amount of United States notes the produce of the exchange, \$8,861.

This amount was taken up by me and has been lawfully used in the secret service of the United States, for which I am at all times ready to account and display proper vouchers.

The annexed account will show the statement of this particular fund up to the 4th May, 1864, when I ceased to command the Sixteenth Army Corps.

The amount of \$5,001, charged to Lieut. Col. W. H. Thurston, assistant inspector-general Sixteenth Army Corps, was left with him for use of my successor in command of the corps. No successor was appointed, and that sum was paid back to me by him and expended in the Department of the Gulf.

I am satisfied that this man has no claim on the United States, but request that a report be required from Capt. George A. Williams, First United States Infantry, as to his merits.

I am, very respectfully,

S. A. HURLBUT,  
*Major-General Volunteers.*

The Treasury regulation in force at the date of the arrest of Kenofsky having relation to gold coin is as follows, viz:

All transportation of coin or bullion to any State or section heretofore declared to be in insurrection is absolutely prohibited, except for military purposes, and under military orders, or under the special license of the President, and no payment of gold or silver or foreign bills of exchange shall be made for cotton or other merchandise within any such State or section. All cotton or other merchandise

purchased in any such State or section to be paid for therein, directly or indirectly, in gold or silver or foreign bills of exchange shall be forfeited to the United States. (Reg. XXII, Trade Regulations, September 11, 1863.)

This regulation was issued under and by virtue of the authority given to the Secretary of the Treasury by section 3 of the act of May 20, 1863.

But the same act, in section 4, provides:

That the proceedings for the penalties and forfeitures accruing under this act may be pursued, and the same may be mitigated or remitted by the Secretary of the Treasury in the modes prescribed by the eighth and ninth sections of the act of July 13, 1861, to which this act is supplementary.

Section 9 of the act referred to declared:

That proceedings on seizures for forfeitures under this act may be pursued in the courts of the United States in any district into which the property so seized may be taken and proceedings instituted; and such courts shall have and entertain as full jurisdiction over the same as if the seizure was made in that district.

The following order was issued by the Secretary of War to the officers and soldiers of the Army in aid of the enforcement of the Treasury regulations:

WAR DEPARTMENT,  
*September 11, 1863.*

The attention of all officers and soldiers of the Army of the United States, whether volunteer or regular, is specially directed to the revised regulations of the Secretary of the Treasury, approved by the President, dated September 11, 1863, and they will in all respects observe General Order of this Department No. 88, and dated March 31, 1863, in regard to said revised regulations, as if the same had been originally framed and promulgated with reference to them.

EDWIN M. STANTON,  
*Secretary of War.*

General Order 88, here referred to, provided, among other things, that—

All other property abandoned or captured or seized as aforesaid shall be delivered to the agent appointed by the Secretary of the Treasury.

Kenofsky's gold came within this provision, and the disposition made of it was contrary to both the law and the Treasury regulations.

The claimant was diligent in pursuing his remedy. He commenced in May, 1865, and followed it in all the ways open to him until the date of his death, which occurred in the city of New Orleans, September 29, 1880. After his death his widow presented her petition to Congress for relief. She died on or about February 7, 1881, leaving seven children in destitution. The lawfully appointed tutor of the children and many citizens of New Orleans then petitioned on behalf of the orphans (who, it is represented, were, at the date of the said petition now before your committee, being supported by the Widows and Orphans' Home of said city) for relief and the repayment to the estate of Kenofsky of the money taken from him as hereinbefore stated.

The United States seems to have received the use and benefit of said money, but not through the methods provided by law. It therefore seems to your committee just that the amount for which said gold was sold, to wit, the sum of \$8,861, should be paid to the legal representatives of the said Martin Kenofsky, and to that end report herewith a bill with a recommendation that it do pass.

March 12, 1884.

[Senate Report No. 310.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

The committee, having considered S. Res. 46, being a "Joint resolution relative to an accepted draft in the Department of State," referred to them by the Senate January 23, 1884, beg leave to report as follows:

The draft referred to bears date "New York, August 19, 1859," and was drawn by Santiago Vidaurri, governor of Nuevo Leon and Coahuila, by Ignacio Galindo, upon J. M. Mata, minister from Mexico to the United States, to the order of J. M. Mata, and made payable at the Bank of Republic, New York, in the sum of \$8,950, with interest at the rate of 6 per cent per annum, one year after date of said draft, and was duly accepted by the said J. M. Mata, and indorsed by him in blank. It bears subsequent indorsements as follows: "Pay Messrs. Howland & Aspinwall, or order, W. H. Callender;" "Pay Messrs. T. B. Tecker & Co., or order, Howland & Aspinwall, without recourse;" "Pay to Messrs. Howland & Aspinwall, without recourse, T. B. Tecker & Co;" "without recourse to Howland & Aspinwall."

It appears from the evidence submitted to the committee by the Department of State that this draft was given in part payment for arms purchased by the Republic of Mexico through Señor J. M. Mata, its minister; that the arms for which this draft was given in payment were delivered on the 19th of August, 1859, the date of the draft under consideration; that the purchases referred to were evidenced by four drafts for various amounts, drawn and accepted by the individuals named in this case, and in the general form herein set forth, and that payment on the same having been refused on presentation, they were duly protested, and subsequently filed with the United States and Mexican Claims Commission under convention of July 4, 1868, for adjudication by that body; that in due course the same were referred to the umpire, Sir Edward Thornton, who decided that the claims thus evidenced were not properly within the jurisdiction and purview of the said commission, and should not be considered by the same, and that the four drafts were thereupon turned over to the custody of the Department of State by the said commission; that during the first session of the Forty-sixth Congress the Secretary of State was directed, by the terms of public resolution No. 15, "to deliver to the person justly entitled to the possession thereof" three of the said drafts, leaving this draft, now under consideration, in the custody of the Department of State.

The committee, therefore, in consideration of the foregoing facts, and that the joint resolution provides that the Secretary of State shall retain a copy of said draft with all indorsements and protests thereon, beg to recommend that the Senate agree to the said joint resolution as amended by the committee, such amendments being necessary to an accurate description of the said draft.

April 24, 1884.

[Senate Report No. 494.]

Mr. Miller, of California, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to which was referred the

petition of Miguel Capella, a citizen or subject of Spain, making claim for compensation from the United States for losses sustained during the war of the rebellion, in Alabama, begs leave to report the same back to the Senate and asks to be relieved from further consideration thereof, and recommends that the said petition and accompanying papers be taken from the files of the Senate and returned to the petitioner.

The reason for the action of the committee herein is to be found in the second clause of the fourth subdivision of Rule No. 7 of the Rules of the Senate, which is as follows:

But no petition or memorial or other paper signed by citizens or subjects of a foreign power shall be received, unless the same be transmitted to the Senate by the President.

This petition not having been transmitted to the Senate by the President of the United States, the petitioner being, as the petition states, a subject of Spain, the committee is of opinion that it has not jurisdiction of the matter.

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May 14, 1884.

[Senate Report No. 548.]

Mr. Miller, of California, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the petition of Philip Schatzle, of Germany, have had the same under consideration and beg leave to report that there is nothing in the petition which, if truly stated, places the United States under any obligation to appropriate money for the support of the petitioner.

The committee therefore ask to be discharged from the further consideration of the subject.

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[See p. 513.]

July 5, 1884.

[Senate Report No. 893.]

Mr. Morgan, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred Senate resolution Mis. Doc. No. 70, have considered the same, and report that the resolution should not pass, and ask that the committee be discharged from its further consideration.

In the ninth article of the treaty of 1819 with Spain the United States engaged "to cause satisfaction to be made for injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."

This was not an engagement to satisfy admitted claims, but such claims, if any, as could be established by process of law. When established, the claims were to be satisfied to the persons injured by the late operations of the American army in Florida, and not to Spain.

The United States did not consent to be sued by the claimants in

its own courts, as constituted for the ordinary administration of justice, and according to their usual procedure, nor did they engage to create judicial tribunals to hear and determine these claims, with jurisdiction and process adequate to conduct a litigation between the United States and the claimants. The extent of the engagement was that the claimants should have the right of access to a tribunal constituted by law, having the power to hear and determine the fact that the claimants were entitled to satisfaction for injuries sustained, etc., before which they could establish their claims and the right to process of law, if any was needed, in aid of such proceeding.

The nature of the tribunal to be organized by law was left undefined by the treaty, and was a matter that was therefore left to the discretion of the United States.

The tribunal organized to hear and determine these claims by the act of 1823, to carry into effect the ninth article, is a full execution of the treaty by the United States. Process of law is supplied by that act through which the claims have been heard and determined.

In the case of *Ferreira v. The United States* the Supreme Court of the United States examined this whole subject. In their opinion the court say: "The treaty certainly created no tribunal by which these damages were to be adjusted, and gives no authority to any court of justice to inquire into or adjust the amount which the United States were to pay to the respective parties who had suffered damage from the causes mentioned in the treaty. It rested with Congress to provide one according to treaty stipulations."

This was done by the act of March 3, 1823, directing the judges of certain courts to "receive and adjust all claims" of the description mentioned in the ninth article of the treaty, and giving the Secretary of the Treasury the power to revise and settle the claims reported to him by the judges, "on being satisfied that the same were just and equitable, within the provisions of said treaty."

In the case of *Ferreira* this law was construed and settled by the Supreme Court as being in accordance with the treaty, and as creating a lawful commission with full power to settle the claims provided for in the ninth article. Congress has therefore done its full duty in providing by law for the execution of the treaty.

In commenting upon the effect of the language of the treaty respecting the words "process of law," the Supreme Court say: "It is said, however, on the part of the claimant, that the treaty requires that the injured parties should have an opportunity of establishing their claims by a process of law; that process of law means a judicial proceeding in a court of justice; and that the right of supervision given to the Secretary over the decision of the district judge is therefore a violation of the treaty. The court think differently, and that the Government of this country is not liable to the reproach of having broken its faith with Spain. The tribunals established are substantially the same with those usually created when one nation agrees by treaty to pay debts or damages which may be found to be due to the citizens of another country. This treaty meant nothing more than the tribunal and mode of proceeding ordinarily established on such occasions, and well known and well understood when treaty obligations of this description are undertaken. But if it were admitted to be otherwise, it is a question between Spain and that department of the Government which is charged with our foreign relations, and with which the judicial branch has no concern. Certainly the tribunal which acts under the law of Congress, and derives all its authority from it, can not

call in question the validity of its provisions, nor claim absolute and final power for its decisions, when the law by virtue of which the decisions are made declares that they shall not be final, but subordinate to that of the Secretary of the Treasury, and subject to his reversal."

The complaints that have been made against the action of the Government relate to the justice of the decisions made by the Secretary of the Treasury in declining to allow interest to be computed on certain of the claims as a part of the measure of damages for the injuries suffered by the claimants.

Congress, if it has the power to make an appropriation to meet the demands thus set up, can not reverse the decision of the Secretary of the Treasury upon these claims.

The committee are not prepared to recommend the opening of these claims, finding no ground for impeaching the justice and equity of the decision of the Secretary of the Treasury in his decision made according to the power confided to him by Congress.

If Spain has any right to intervene in this matter, it can only be upon the ground that the language of the treaty should be re-formed so as to carry into effect the real understanding among the treaty powers.

No such demand has been made by Spain, so far as the committee are advised. The Supreme Court of the United States has conclusively settled the question that the act of March 3, 1823, is a proper execution of the ninth article of the treaty, as it is construed by that high tribunal.

The Committee on Foreign Relations decline to recommend to the Senate that it request or advise the President to institute the negotiations with Spain that are indicated in the resolution referred to them.

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[See pp. 518, 528.]

#### **FORTY-NINTH CONGRESS, FIRST SESSION.**

**February 10, 1886.**

[Senate Report No. 98.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

Your committee, to whom was referred Senate bill 1219, for the relief of the heirs of Martin Kenofsky, find that Martin Kenofsky, a Prussian subject, was a resident of Grenada, in the State of Mississippi, in 1864; that he was a man of Union sentiments; that he converted his possessions into gold, amounting to \$4,992.50; then started for Memphis, at that time occupied by the Union forces; was seized within the lines, his gold taken from him, and he cast into prison, from which he was discharged without trial, and without any restoration of his property. The gold was converted into currency, realizing \$8,861. By authority of military officers in command, this money was used for military purposes, contrary to law and the regulations of the Treasury Department. It should have been covered into the Treasury.

The claimant was industrious in pursuing his remedy, commencing at once, in 1865, by application to the Secretary of War, and continuing without cessation until his death in 1880. Then his widow peti-

tioned Congress for relief, but died, pending its hearing, in 1881, leaving seven children in destitute circumstances. The authorities of the Widows and Orphans' Home of New Orleans and friends of the family then petitioned Congress for relief. No laches can be charged against the claimants.

The United States have had the benefit of this money; it was not justly exposed to confiscation; it should have been in the Treasury to-day, subject to the disposal of Congress, and in the opinion of your committee justice requires that, notwithstanding it was never covered into the Treasury, having been committed to the use of the Army contrary to law, this money should be paid to the legal heirs of Martin Kenofsky, and they accordingly report back the bill referred, with an amendment striking out the words "eight thousand eight hundred and sixty-one dollars," in the sixth and seventh lines, and inserting instead thereof the words "four thousand nine hundred and ninety-two dollars and fifty cents," with the recommendation that as amended it ought to pass.

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[See pp. 528, 532.]

May 6, 1886.

[Senate Report No. 942.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 2088), for the relief of the owners, officers, and crew of the British bark *Chance*, respectfully report:

The facts in this case appear to be as follows:

The *Chance* was a whaling bark hailing from Sydney, New South Wales. Her owners in March, 1871, had fitted her out at Sydney, at an expense of £3,200 (or \$16,000), for a voyage in the Arctic Ocean. Besides her captain and chief officer, she carried four mates and a crew of twenty-eight men.

Sailing in the spring of 1871, with a complete outfit to take whales, she arrived on the whaling grounds early in September. The season is short, extending from about the 1st of September to the middle of October; and it appears that the season of 1871 was unusually promising. Whales were plenty, and there was every prospect of the *Chance* obtaining a full cargo of oil and bone.

The American whaling fleet of some thirty vessels had been caught by the ice about 60 miles north of where the *Chance* then was, and four of the vessels wrecked. Twelve hundred men were imprisoned, with no hope of escape, except by the aid of such ships as were in the neighborhood to the south.

The captain of the *Chance* received a letter from the masters of these American vessels addressed to "any shipmaster south of Icy Cape." This letter in eloquent terms set forth the calamity that had overtaken the American fleet, and the danger that threatened their officers and crews. It appealed for instant aid, and closed as follows:

We realize your peculiar situation as to duty, and the bright prospects you have for a good catch in oil and bone before the season expires; and now call on you, in the voice of humanity, to abandon your whaling, sacrifice your personal interest, as well as that of your owners, and put yourselves in condition to receive on board ourselves and crews for transit to some civilized port, feeling assured that our Government, so jealous of its philanthropy, will make ample compensation for all your losses.

The master of the *Chance* gave up his voyage and got ready to take all of these unfortunate men on board that they had room for. They were brought to the *Chance*, and she sailed on the 15th of September, crowded with men, for Honolulu, at which port she arrived safely October 29. By this timely act the *Chance* rescued from almost certain death ninety-six American seamen.

It happened that Mr. J. C. Pfluger, of the firm of Hackfeld & Co., of Honolulu, held a general power of attorney from the owners of the *Chance*. Upon her arrival under these extraordinary circumstances Mr. Pfluger took the responsibility of drawing up an account, charging the United States at the rate of \$35 a man for the passage of the officers and crews thus brought to port. The United States consul at Honolulu approved the account and certified to the facts. This account Mr. Pfluger transmitted to Frederic Probst & Co., at New York, who sent it to Secretary Fish by letter of December 9, 1871.

The claim for \$3,360 aggregate thus instituted was forwarded without the knowledge or sanction of the owners themselves.

On February 13, 1872, the owners applied at Sydney, through our consul, Mr. Hall, for compensation for breaking up the voyage.

In May, 1872, however, the owners ratified Mr. Pfluger's action by executing a new power of attorney to Hackfeld & Co. The claim for \$3,360 passage money was allowed by the First Comptroller July 27, 1872, and the money paid to Probst & Co.

The Treasury Department evidently made this payment under authority conferred by the first section of the act of February 28, 1811, for the relief of destitute seamen. (2 Stat., 651.)

The section reads as follows:

In all cases where distressed mariners and seamen of the United States have been transported from foreign ports where there was no consul, vice-consul, commercial agent, or vice-commercial agent of the United States, to ports of the United States, and in all cases where they shall hereafter be so transported, there shall be allowed to the masters or owner of each vessel in which they shall or may have been transported such reasonable compensation, in addition to the allowance fixed by law, as shall be deemed equitable by the Comptroller of the Treasury.

The claim was for transportation and maintenance of mariners. It had no reference to the breaking up of the voyage. The money went to the owners to pay for the use of the vessel and for provisions. It did not represent proceeds of the voyage to be divided amongst officers and crew, as well as the owners, proportionately in the same manner as "lay." The payment of \$35 a man appears to have been reasonable compensation as passage money.

When the bark abandoned her whaling voyage, she had taken on board, as an affidavit by one of the owners declares, 20 tons of black oil and 1 ton of bone, the fair value of which was \$6,500. A fair catch for that season was worth from \$20,000 to \$30,000.

In presenting our claims at Geneva for losses sustained by the destruction of the whaling fleet in the Arctic by the *Shenandoah*, our Government said of the "catch:"

The business when undisturbed by violence is sure of a return. As certain as the harvest to the farmer is the catch of oil to the whaler. The average catch of whales is well known and understood by the merchant and seaman. Upon this knowledge of probable average catch the sailor readily procures an advance before sailing, and his family obtain necessities and a support during his absence. (III Gen. Arb., 254.)

The Court of Commissioners of Alabama Claims, in the cases of four whalers impressed by the *Shenandoah* to take to Honolulu the officers and crews of vessels she had burned in the Arctic, decided that there

should be awarded the owners (besides compensation for property destroyed and expenses incurred) jointly—

a sum to be received by them in lieu of catch, and in the enjoyment of which the ship's company shall have part, in the same manner as if the sum was the proceeds of oil and bone, which sum shall include compensation for the provisions consumed by the crew of the vessel in making the voyage, and for the enforced use of the vessel during the voyage and the compulsory service of the officers and crew, and shall also embrace the considerations that the vessels were left at a point thirty days' sail at least from their point of departure, to which point they had a right to claim to be returned or to receive compensation for the failure so to be. (Report from Secretary of State, Senate Ex. Doc. No. 21, Forty-fourth Congress, second session, 1877, p. 55.)

It is well known that the officers and crew of whaling vessels get no wages as such, but a share of the "lay," i. e., a proportionate part of oil and bone taken. It appears that the "catch" is a tolerably determinate amount, according to the season. The *Chance* being on the grounds where whales were plenty was almost certain of getting her full cargo.

Papers on file contain an estimate that the bark would have taken 800 barrels of oil, worth, at 60 cents a gallon, \$15,120; and 12,000 pounds of whalebone, at \$1.25, worth \$15,000. It being too late for the *Chance* to return to the whaling grounds, she lost that season's catch.

Allowing for the passage money paid, for receipts from the catch up to the breaking up of the venture, the loss to the officers and crew must have been at least ten or twelve thousand dollars. The losers are subjects of a foreign power, are in no respect responsible for the delay in the adjustment of their losses, and in the opinion of your committee should receive the usual English rate of interest in addition to the direct damages suffered by them in their noble rescue of our imperiled seamen. Your committee recommend an amendment, as follows:

Strike out the words "ten thousand" in the sixth line and insert the words "fifteen thousand five hundred;" and that the bill so amended ought to pass.

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July 28, 1886.

[Senate Report No. 1583.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred House resolution 118, "relative to certain papers in the State Department by error," having considered the same, beg leave to report it back without amendment, with recommendation that it be agreed to. .

The committee also submit herewith the report made by the Committee on Foreign Affairs, House of Representatives, in this case, adopting the same, and requesting that it be made a part of this report:

The Committee on Foreign Affairs, to whom was referred the joint resolution relative to certain papers in the State Department by error, have considered the same and recommend its passage.

It appears that when the United States and Mexican claims commission was appointed to examine the papers that would be presented to them for the purpose of settling the claims of citizens of both countries, Mr. John Potts (a British sub-

ject), residing in Mexico, through the agency of a Mr. MacManus, also a resident of Mexico, laid before the commission certain original documents issued by the Mexican Government on the collectors of customs at sundry ports for the payment of money to said John Potts, and which he had loaned to the Mexican Government.

The claims commission, on examining the papers in question, rejected them on the ground that being a claim of a British subject they could on no account be adjusted amongst the claims to be passed upon by the said commission, and consequently the papers were handed over to the State Department, at Washington, for safe keeping. The Secretary of State states to the agent of the executrix of the said John Potts, Mrs. Florence Graham Hardy, that he is not authorized to deliver up said papers without a special act of Congress to that effect.

The papers are in the State Department by error, and should be returned, in accordance with the joint resolution, which follows the precedent of joint resolution No. 17, of June 28, 1879 (p. 54, vol. 21, Stat. L.). All safeguards are thrown round the joint resolution by providing that the papers shall only be returned to the person justly entitled to the possession thereof. As an act of justice the papers should be returned at once.

### FIFTIETH CONGRESS, FIRST SESSION.

January 18, 1888.

[Senate Report No. 67.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1026) for the relief of the owners, officers, and crew of the British bark *Chance*, respectfully report:

[See Senate Report 942, Forty-ninth Congress, first session, p. 525.]

March 7, 1888.

[Senate Report No. 483.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1671) for the relief of the heirs of Martin Kenofsky, has considered the same, and submit the following report made on a similar bill at the first session Forty-ninth Congress, and renew the recommendation that the bill do pass, with amendments proposed by the committee.

[See Senate Report 98, Forty-ninth Congress, first session, p. 518.]

[See pp. 558, 563, 569.]

July 28, 1888.

[Senate Report No. 1945 and Views of Minority.]

Mr. Payne, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 948) for the relief of the representatives of James and William Crooks, of Canada, have carefully considered the same and respectfully report:

That in the year 1812 the said James and William Crooks were British subjects, residents of Upper Canada, and the joint owners of the

schooner *Lord Nelson*. On the 5th day of June in that year the *Lord Nelson*, while plying her ordinary trade on Lake Ontario, was seized by Lieutenant Woolsey, of the United States Navy, commanding the brig *Oneida*, thirteen days before the existence of war was declared by the Government of the United States; was carried by him into Sacketts Harbor, in the State of New York, and on the 20th of August was libeled at the suit of the Government in the district court of the United States for the district of New York, and was afterwards, under a decree of the court, sold to Lieutenant Woolsey for the United States for the sum of \$2,999.25, taken into the service, armed, and used against Great Britain in the war.

This seizure was subsequently by the court declared unauthorized and illegal. For this the claimants ask reimbursement in a sum equal to the value of the schooner at the time of the seizure and interest to the date of payment.

First. Your committee is unable to controvert the claim for reimbursement. The seizure antedates the declaration of war, and international law protects private property until such proclamation is made. Moreover, the illegality of the seizure was distinctly decreed by the admiralty court, and such was substantially admitted by the Executive in responses to the representatives of the British ministry, namely, by John Q. Adams to Charles Bagot in 1818, Mr. Forsyth to H. S. Fox in 1840, and by John M. Clayton in 1850, who, in a letter to the chairman of the Committee on Ways and Means of the House, said:

An examination of the subject has led this Department to the conclusion that the claim is meritorious, and, adopting the language of a special message to Congress in 1819 in regard to it, I feel satisfied that "these injuries have been sustained under circumstances which appear to recommend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

And he recommended an appropriation of \$5,000 and full legal interest from the 5th of June, 1812, the date of the capture. And in these views Mr. Bayard, in his letter to the President under date of April 1, 1886, fully concurred.

Second. What was the value of the *Lord Nelson* at the time of seizure? At the marshal's sale it was bid in for the Government at \$2,999.25. But in the absence of evidence of the attendance of the claimants or competing bidders this does not furnish presumptive, much less conclusive proof of real value. In 1837 the House of Representatives, on the recommendation of the Committee on Claims, referred it to the Secretary of the Navy "to report as to the value of the vessel when captured on the 5th of June, 1812." On the 11th of February, 1837, Hon. Mahlon Dickerson, Secretary of the Navy, reported to the House that he appointed the Hon. James Stryker, of the city of Buffalo, in the State of New York, to take the testimony required by said resolution; and notice having been given to the attorney of said James and William Crooks of the time and place of taking such testimony, that he appointed George P. Barker, esq., of said city, agent on the part of the United States, to be present of the time of the examination of the witnesses for the purpose of putting such interrogatories to them as might to him appear to be proper and necessary to elicit all the facts and circumstances of the case as connected with the inquires specified in the aforesaid resolution. The commission was opened in the city of Buffalo on the 10th, and closed on the 20th of January last, and the depositions, numbered 1 to 7, with the papers and exhibits,

were returned to him, and "from a careful examination of the evidence contained in those papers, I am of the opinion that the value of the *Lord Nelson* at the time of the capture may be estimated at \$5,000."

Your committee have no difficulty or hesitation in accepting that sum as the fair and just value of the vessel.

Third. The amount of damages being ascertained, the next question presented in the case is, whether interest should be allowed thereon, and, if so, for what time and at what rate.

The payment of interest in cases of illegal capture or wrongful seizure of property has by long usage been authorized and adopted by our Government. It has uniformly exacted it from, and conceded it to, foreign governments. Compensation and indemnity for the wrong committed could not well be made complete without it. Usually the rate allowed is the legal rate. But there may exist special circumstances and incidents which would justify a departure from that rule, and in the judgment of your committee the present is one of that class, Seventy-six years have elapsed since the capture of the *Lord Nelson*. and though the Government is largely responsible for this extraordinary and inexcusable delay, the claimants have during several periods of time been lax and remiss in the prosecution of their remedies. Moreover, objections to the validity of the claim have been made by committees of the two Houses. An unsuccessful suit was commenced in the Court of Claims, and for so long a term 6 per cent would be more than a compensatory rate. In the Forty-ninth Congress the Committee on Foreign Affairs in the House, in a very able and exhaustive report, recommended that interest at the legal rate, for the reasons above suggested, should be allowed only to September 14, 1872.

Your committee think that a liberal and not a technical view should be taken of the matter, and that a just and equitable reparation should be frankly rendered by Congress in this case. In the judgment of your committee \$5,000, with interest thereon at the rate of 4 per cent, would constitute such reparation.

Your committee deem it unnecessary to discuss the action of the Court of Claims or that of the admiralty court in the State of New York further than to say that the condemnation and sale of the vessel, and the subsequent embezzlement by the clerk, Rudd, ought not to prejudice the claimants, as there is no evidence of their presence and assent to the proceedings.

The plain facts are that this vessel was illegally seized, taken possession of, and used for the purposes of the United States Government, and that the owners, represented by the present claimants, have never received any pay for the vessel. The claim was persistently pressed during the life-time of the original owners, and has at different times received the approval of the Executive, the Senate, and the House of Representatives. An injury was inflicted by the wrongful act of an officer of the United States Navy, of which act the Government took advantage, and has never made compensation to the claimants.

The committee recommend the following amendments to the bill:

After the word "sum," in line 12, insert the words "at the rate of 4 per cent."

And at the end of the bill add as follows: "Such payment shall be in full satisfaction and discharge of all claims and damages whatsoever arising out of or connected with the seizure and disposition of said vessel."

And thus amended they recommend the passage of the bill.

## VIEWS OF THE MINORITY.

Mr. Morgan submits the following views in opposition to the report of the majority of the Committee on Foreign Relations:

This case will constitute an important precedent on the question of the rate of interest and the length of time during which interest is to be allowed to accumulate on demands for compensation for acts that are tortious.

Conceding, for the sake of the argument, and not because I believe it to be just, that the United States Government is bound to these claimants for the value of this vessel, because it was unlawfully captured and sold, such liability is a claim sounding in damages, and this proceeding is in the nature of a finding of damages for an alleged trespass. A jury, in awarding a sum of money to compensate the claimants, might justify an increase of damages by resorting to the analogy to be found in our interest laws; but, in doing this, the jury would be governed by the circumstances of the case.

I find nothing in those circumstances to justify a larger amercement of the United States than the value of the ship. It was seized in good faith and while war was flagrant, whether or not its existence had been recognized by a formal declaration of war by Congress.

I am not prepared to solemnly admit that public justice, or wise policy, can sustain a continuing and growing burthen of interest, for a period of seventy years on a disputed liability, sounding in damages.

This claim has been sometimes adversely reported and at other times favorably by the committees of Congress. Adverse reports have not checked the zeal of the claimants, and they have sent in new petitions from time to time. It is at least fair to the Government that it should have the benefit of these adverse decisions to the extent that it may claim that each new proceeding after an adverse report was a fresh suit and not a continuation of the old one. Considered in this view the claim of interest for seventy years would seem preposterous.

Claimants of damages against the United States can in this way fund their damages in our credit, and, waiting the opportune moment to realize, they can make great profit out of the delay that has been caused possibly by their own procurement.

If we are now to establish the rule that we will pay interest at any rate per cent on claims sounding in damages, it is very essential that we should place some limit of time beyond which such interest must cease. I insist that the analogy of the prescription of twenty years, which under the common law bars every other right of property or of action, should be employed to fix the limit of the growth of interest on claims sounding in damages.

Prescription is for the peace of society and is a wholesome rule, by which the public good and public justice are promoted. It may cause injustice to individuals in some cases, but its benefits to society are proven by centuries of experience.

The doctrine of prescription, and probably the statutes of limitation, could be well applied to the principal of the demand in this case. I take the ground that the claim never was just; but one of our courts has decided that the seizure was not lawful, and I feel bound by that ruling. But when we are asked to increase the liability of the United States more than threefold by way of interest to compensate the claimants, I feel bound to stop at the line of twenty years in the allowance of that measure of damages.

JNO. T. MORGAN.

[See pp. 525, 528.]

**FIFTY-FIRST CONGRESS, FIRST SESSION.**

January 16, 1890.

[Senate Report No. 112.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred Senate bill 1236, report that the bill ought to pass, and in justification of this recommendation refer to a report of facts, made January 18, 1888. (Report No. 67, first session of the Fiftieth Congress, claim of owners of British S. S. *Chance*.)

[See p. 553.]

**FIFTY-SECOND CONGRESS, FIRST SESSION.**

April 20, 1892.

[Senate Report No. 577.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill for the relief of the owners and crew of the Hawaiian bark *Arctic*, having had the same under consideration, respectfully report that a bill (H. R. 10267, Fifty-first Congress, second session) for the relief of the owners and crews of the American whaling vessels *Midas*, *Progress*, *Lagoda*, *Daniel Webster*, and *Europa*, involving identically the same questions of fact and service as those on which this bill for the relief of the *Arctic* is based, passed Congress at such second session, and became a law February 21, 1891.

The unselfish humanity of the officers and crews of these American whalers in foregoing the objects and profits of their whaling voyages that they might rescue more than a thousand souls from the perils of cold, hunger, and death involved in their ice-bound imprisonment within the whaling grounds of the Arctic Circle, successfully appealed to the justice and generosity of the nation; and the same justice and generosity is due to the owners and crew of the *Arctic*, of foreign registry, who made equal sacrifices and showed equal alacrity in following the instincts of humanity which is not bounded by nationality or race.

The committee does not deem it necessary to recapitulate the circumstances attending the rescue of the officers and crews of more than thirty vessels embargoed in Arctic ice, which more than twenty years ago sent a thrill of relief through the hearts of the civilized world, but which for twenty years remained without national recompense or recognition. The tardy justice awarded at the last Congress to the owners and crews of the rescuing vessels of American registry is still withheld from the Hawaiian ship which heartily united with ours in this memorable rescue. The bill under consideration repairs the wrong of this long delay.

The committee append a report made on the bill of the last session (which afforded relief to the American whalers) by the Senator from

Wisconsin (Mr. Spooner), and adopt the report (No. 918) from the Committee on Claims, House of Representatives of the present session, in favor of a bill of the same purport with that under consideration, with amendments corresponding thereto, as follows: Strike out in lines 6 and 7 of the first section the words "fifty thousand dollars," and in lieu thereof insert the words "twenty-three thousand five hundred dollars," and in line 10 of said first section strike out the word "five," and in lieu thereof insert the word "six;" and thus amended the bill is recommended for passage.

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[House Report No. 918, Fifty-second Congress, first session.]

Mr. Page, of Rhode Island, from the Committee on Claims, submitted the following report:

The Committee on Claims, to whom was referred the bill for the relief of the owners and crew of the Hawaiian bark *Arctic*, submitted the following report:

The memorialists show that early in the month of September, A. D. 1871, they were prosecuting a whaling voyage in the Arctic Ocean, near Blossom Shoals.

The vessel had been fully and completely equipped for the business at great expense, and was then upon the whaling ground fully and completely prepared for the successful prosecution of their voyage (see Exhibits B and C, hereto annexed); that the season for taking whales upon that ground is from the 1st of September till the middle of October, and they had just commenced to take whales, which were plenty and available to capture, there being every prospect of a successful catch, amounting to a practical certainty as near as may be.

That while thus prosecuting their voyage, in company with six other vessels, the masters of said vessels received from the masters of some thirty American whaling vessels, which were lying about 60 miles farther north, a letter, a copy of which is hereafter given (see Exhibits D and G, hereto annexed), announcing that their ships were hemmed in by an impassable barrier of ice, which the winds had packed up, and they would be obliged to abandon them; that their provisions were insufficient to support the ship's company until the next summer even if they could withstand the rigors of the Arctic winter, and that their only chance for life was with the ships above named which were outside the barrier.

The master of the bark *Arctic* felt it his duty in the cause of humanity to abandon the good prospects of several weeks' whaling, which were still before him, and hasten to the rescue of such portions of this large number of men as he could receive on board with safety and carry to some port. This conclusion was reached after consultation with the masters of the barks *Daniel Webster*, *Chance*, *Lagoda Midas*, *Europa*, and *Progress*, these six vessels and the *Arctic* being then clear of the ice and in a position to render substantial aid. That these seven vessels proceeded in company to their relief to a point a few miles from Blossom Shoals. On this same day, viz, 14th day of September, the shipwrecked men began to arrive from the ice-bound and abandoned fleet, whereupon the bark *Arctic* took on board as many as could be carried in safety; they consisted of 176 persons from the vessels named in Exhibit E, hereto annexed.

The United States by its laws has made provision and assumed the duty of maintaining and transporting shipwrecked American seamen, and your committee think it should do so; that it is proper and just that a great government like our own should rescue and save its shipwrecked seamen. And your committee can see no material difference in this case than in an ordinary case of shipwreck, and your committee think these petitioners should be compensated fairly by the Government for their services and losses resulting from their humane work in saving these distressed American seamen.

Your committee also find that 176 of these shipwrecked seamen were taken to Honolulu by the memorialists: that they abandoned their whaling voyages entirely, and on the 14th day of September the shipwrecked seamen from the abandoned vessels began to arrive where the vessel of the memorialists was at anchor ready to receive them, and that on or about the 16th of September the memorialists set sail for Honolulu with the shipwrecked seamen from the wrecked fleet—which was an American whaling fleet—and that they arrived at Honolulu about the 23d day of October, and the men so rescued were turned over to C. S. Mattoon, esq., United States consul at Honolulu.

As appears by said consul's certificate (a part of Exhibit E hereto annexed), at the time the bark *Arctic* abandoned the whaling voyage for the purpose of rescuing these men there was every prospect of good whaling up to about the 30th of October, which promised a catch, in addition to what they already had on board, of 900 barrels of whale oil, additional, and 16,000 pounds of bone.

Under the circumstances, we estimate the loss from the abandonment of the voyage as follows:

900 barrels whale oil, at 75 cents per gallon .....	\$21,262.50
16,000 pounds whalebone, at \$1.75 per pound .....	28,000.00
Loss and damage to outfits and ship .....	1,500.00
<b>Total</b> .....	<b>50,762.50</b>

At the time of the disaster to the 32 whaling vessels referred to in the above-quoted letter, signed "Henry Pease, jr., with 31 other masters," the Government had no refuge station in that region and had not at that period established any patrol relief vessels in those waters.

Your committee feel that the time has now arrived when Congress has established good and sufficient precedents in the following awards made by acts of Congress:

The Forty-seventh Congress, second session, awarded the owners of the whaler *North Star* \$20,000 for rescuing 22 men of the U. S. S. *Rodgers*. The Fiftieth Congress, second session, awarded the owners of the schooner *Era* \$13,500 for rescuing 23 men. The Fifty-first Congress, first session, awarded the British whaler *Chancee* \$16,000 for rescuing 96 men from the abandoned fleet herein referred to. The Fifty-first Congress, second session, awarded to barks *Midas*, *Daniel Webster*, *Lagoda*, *Progress*, and *Europa* a total sum of \$125,000 for rescuing 900 men of the said abandoned Arctic fleet.

Reference to all the documents and proofs which are now on file with the Clerk of the House of Representatives, and which are in a large measure referred to in Senate Report No. 2188, Fifty-first Congress, second session, and which were introduced in support of the claims made in behalf of the vessels last named, to wit, the *Chancee*, *Midas*, *Daniel Webster*, *Lagoda*, *Progress*, and *Europa*. It will be seen by the affidavits, etc., put in in support of the claim of the American vessels last named that these expressly show that the *Arctic* was one of the seven rescuing vessels just named; that she, the *Arctic*, engaged in said rescue at the same time and under precisely the same conditions as did the six vessels which have been compensated for by the Fifty-first Congress, and that her title to compensation is identical with that of those vessels which have already been relieved.

A demand was made for payment "for breaking up the whaling voyage on the 13th of September, 1871," and for rescuing the officers and crew of the vessels named in said Exhibit E; but the Government refused to pay for any losses for breaking up the voyage owing to the fact that no law then existed authorizing it. The statements and affidavits are now on file with the papers in the case, and they appear to this committee to cover all the material points. Or, in other words, the claim appears to be fully fortified and sustained in all its facts. The papers on file are very voluminous, and a fair inference from the reports of former committees, as above quoted from, is that the papers were entirely satisfactory.

This committee is abundantly satisfied that it is simply just and right that the Government should treat these petitioners with generous magnanimity. They have been patient waiters. The great delay in receiving relief appears not to have been their fault at all. Whatever the Government shall do for them in the nature of a reimbursement of their great losses or of those losses coupled with a consideration as a reward, as recommended in such cases by the Secretary of the Treasury (see Ex. Doc. No. 48, Fiftieth Congress, second session), it will be observed, comes at a late day, and that these petitioners were justly entitled to such reimbursement and reward speedily after their great misfortune. These losses to them occurred a great many years ago, and it is reasonable to believe that at least a portion of these owners, officers, and crews suffered a very considerable pecuniary embarrassment in consequence of this disaster to their whaling voyage; a disaster involving not only the loss of their annual "catch," but also the loss of at least a considerable portion of their expensive outfit.

Your committee find that this Government has on various occasions recognized the justice of furnishing relief to the owners of vessels which have abandoned their own voyages, and in a spirit of humanity, rescued the crews of stranded vessels, a few of which we have above cited.

The precedents above referred to appear to completely match the case now before this committee. They have all been established by recent Congresses.

So that this committee has for its guidance, and as an aid to its judgment, these precedents.

It is a matter of common knowledge that all Congresses have acted with magnanimity and with great liberality toward parties who have served their country by acts of common humanity at times and under circumstances which required an utter abandonment of all regard to personal interests or considerations.

It was a glorious and wonderful work by the officers and crew of this whale ship to save the lives of these 176 men under such circumstances.

The sacrifice of leaving homes and families, at great expense and discomfort, with no hope of reward except upon the whaling grounds in the capture of whales, reached after twelve months of sailing upon the oceans of the globe, the North and South Atlantic oceans, as well as the South and North Pacific oceans, as San Francisco was not then known as a whaling port, as supplies adapted to their peculiar wants were not procurable there, yet having reached this point and finding plenty of whales, they are reached by a messenger from a whale boat's crew with the imploring letter by Henry Pease, jr., and 31 of the shipmasters, beseeching their assistance for 1,200 men, the officers and crews of 32 American whale ships, inextricably hemmed in by ice, with nothing but starvation and death before them.

Yet in this acme, or height of their hopes and aims, they abandon the legitimate object of their voyages to save these men from death, or worse—the rigors of a frozen zone, unprepared with sufficient clothing or food for the winter season, soon to overtake them.

Such acts of moral heroism are rarely, if ever, excelled in the annals of mankind. By these acts the officers and crew of this whaler are deprived of their earnings for these past twelve months, as well as the twelve months to come, as another year must pass (making two years of toil) before they shall be able to reach their harvest field, amid surrounding ice and snow for which they left their homes on the Atlantic coast. Nor is this all, many of these officers and men having families at home, are in need of earnings, which these unimproved opportunities would have afforded except for this humane work. Not only these but the families represented by the ownership of this vessel are stinted, first or last, by this very course of benevolence, pursued by those in custody of their property. Yet while no complaint so far as we know has ever arisen from a single New England owner or his family, it remains true that the majority of these owners, because of the financial embarrassments that have long ago taken place, on account of those two long years of delay in receiving the receipts of their hardy and legitimate business, from this very whale ship, have been and are suffering to-day.

We feel assured that the master, officers, and crew of this ship, as well as the families represented by the agents and owners of the same, should not be longer without relief from these losses by a generous, noble, honorable, and mighty nation, now rising with rapid strides to its zenith of glory and power to the admiration of all mankind.

The above precedents, as well as the well-understood temper of all Congresses in regard to just and proper treatment of this class of petitioners for relief, seem to make the way generally very clear as to the duty of this committee.

We now come to the question of the amount to be paid the petitioners. It is clear that, had it been known that these 176 men were situated as there is overwhelming evidence that they were, a demand would have come up from the entire country that the Government fit out and send ample relief vessels in the briefest possible time, regardless of the expense to the nation.

It is also clear that had such information reached the authorities of the Government, no time would have been lost in directing the master of this whaler to forthwith abandon all the interests of his owners, their crew, and of himself, for the rescue of these unfortunates; and that they should look to the Government for ample compensation for all losses and for reward. But there were no means of speedy communication at that date with those desolate regions.

And this vessel simply did it without formal orders, and they acted on the principle that it was a duty to common humanity. The rescue of 176 human beings from those frozen regions was an act of unparalleled magnitude. No case of such magnitude appears or can be found in the history of any maritime nation on the globe. No such peril ever was known to exist in the Arctic or Antarctic oceans, where 1,200 lives were in such imminent peril from the frozen regions. And the masters of these vessels showed a heroism worthy of recognition and commensurate reward.

The committee find that the amount allowed to the other six vessels engaged with the *Arctic* in rescuing these 1,200 men was \$138.89 for each person by the other vessels rescued, or an average of \$23,500 to each vessel.

Your committee therefore recommend that said bill be amended as follows: In lines 6 and 7 strike out the words "fifty thousand dollars." and in lieu thereof insert "\$23,500;" and that when so amended said bill do pass.

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EXHIBIT A.—*Palapala Moku Hawaii.*

Helu 50. (Hon.)

[Royal stamp.]

*Eike ananeina Kanaka a pau.*

Keia Palapala manau o na Kanawai o ke Hawaii Pae Aina en haku hoikeia ka moku. *Arctic* he 425 1-95 tona kona mei a no A. Francis Judd, he Kanaka Hawaii a nona wale no ia Moku, he Kiapa ka paakaula ana, he mau kia Ekohi Hookahi hanere me eiva Kalau Kapuai ka Laula Umikumamahiku kapuai ka Hohonu. He Ihu wili kona a he Hope poepoe Ua Kapileia. Ma Rochester Mass., U. S. A., M. H., 1850 a. o., *Arctic*. No kona inoa mamua malalo o ka Hae o Amerika Huipua Ua kakau ponoia he moku Hawaii, ma ka Hale Dute ma Honolulu: a wolailo, e loaia na pono a me no pomaikai a pau i pile i na moku Hawaii, Maloko o na Awa o keia Aupuni, a me na Aupuni e ae a maluna hoi o ka Moana.

No ka oiaio o keia he pekau nei au i ko ie inoa a ke kau nei hoi i kiu sila oihana ma Honolulu, ko Hawaii Pae Aina i keila 28 O Marki M. H., 1864.

[L. S.]

W. H. ALLEN,  
*Luna Dute nui.*

CONSULATE OF THE HAWAIIAN ISLANDS,  
*Boston, September 13, 1864.*

I hereby certify that the above-recited register of the Hawaiian bark *Arctic*, which vessel is now lying in the port of Boston, is a true and correct copy, in the Hawaiian language, of the original register, now on temporary deposit in this consulate.

In witness whereof I have hereunto set my hand and official seal the date aforewritten.

[L. S.]

HENRY A. PIERCE,  
*Consul for H. M. M. for Boston, New Bedford, etc.*

STATE OF MASSACHUSETTS,  
*Suffolk, ss:*

CITY OF BOSTON, *December 1, 1876.*

I, Henry D. Clary, a notary public, duly commissioned and sworn, hereby certify that the within is a true copy of the copy of the register of the bark *Arctic*, this day presented to me for verification.

In witness whereof I have hereunto set my hand and seal of office the day and year above written.

[SEAL.]

HENRY D. CLARY,  
*Notary Public.*

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EXHIBIT B.—*Certificate of Hawaiian registry.*

No. 50. (New.)

*Know all men by these presents:*

That pursuant to the laws of the Hawaiian Islands, the *Arctic*, 425 1-95 tons, whereof A. Francis Judd, a Hawaiian subject, is sole and only owner, and bark rigged, carrying three masts, 120 feet in length, 28 feet in breadth, 17 feet in depth of hold. Has a billet head and round stern. Built at Rochester, Mass., A. D. 1850, late the *Arctic* under the flag of United States of America, has been duly registered at the custom-house in Honolulu as a Hawaiian vessel, and is therefore entitled to all the rights and privileges appertaining to Hawaiian vessels, whether in the ports of this kingdom, or those of other nations, or upon the high seas.

In witness whereof I have hereunto set my hand and official seal at Honolulu, H. I., this 28th day of March, A. D. 1864.

W. H. ALLEN,  
*Collector-General of Customs.*

CONSULATE OF THE HAWAIIAN ISLANDS,  
*Boston, September 13, 1864.*

I hereby certify that the above-recited register of the Hawaiian bark *Arctic*, which vessel is now lying in the port of Boston, is a true and correct copy, in the

English language, of the original register, now on temporary deposit in this consulate.

In witness whereof I have hereunto set my hand and official seal the date aforewritten.

[L. S.]

HENRY A. PIERCE,

*Consul of H. H. M. for Boston, New Bedford, etc.*

STATE OF MASSACHUSETTS,

*Suffolk, ss:*

CITY OF BOSTON, *December 1, 1876.*

I, Henry D. Clary, a notary public, duly commissioned and sworn, hereby certify that the within is a true copy of the copy of the register of the bark *Arctic*, this day presented to me for verification.

In witness whereof I have hereunto set my hand and seal of office the day and year above written.

[SEAL.]

HENRY D. CLARY,  
*Notary Public.*

EXHIBIT C.—*Outfit bark Arctic.*

2 suits sails.	Cabin furniture.	Paints.
2 bow anchors.	Galley furniture.	Groceries.
4 small anchors.	Spare spars.	Oil casks.
180 fathoms chain.	Stoves.	Coopers' implements.
1 hawser.	Flags and signals.	Bomb lances.
Hauling lines.	7 whale boats.	Sailors' clothing.
Blocks.	Carpenters' implements.	Chronometer.
Water casks.	Riggers' implements.	Water.
Cannon and small arms.	Whaling guns.	Fresh provisions.
Ammunition.	Ship chandlery.	11,919 pounds cordage.
Total value.....		\$22,030
Cash advanced to officers and sailors.....		2,970
Total outfit.....		25,000

EXHIBIT D.

SHIP CHAMPION,

*Off Point Belcher, September 12, 1871.*

*To the masters of the ships in clear water south of Icy Cape:*

GENTLEMEN: By a boat expedition which went out to explore the feasibility of a ship's passage to clear water, report there are seven vessels south of Icy Cape in clear water, whaling.

By a meeting of all the masters of the vessels which are embargoed by the ice along this shore, as also that have been wrecked. I am requested to make known to you our deplorable situation and ask your assistance.

We have for the last fifteen days been satisfied that there is not the slightest possibility of saving any of our ships or their property, in view of the fact that the northern barrier of ice has set permanently on this shore, shutting in all the fleet north of Icy Cape, leaving only a narrow belt of water, from one-quarter to one-half mile in width, extending from Point Belcher to south of Icy Cape. In sounding out the channel we find from Wainwright Inlet to about 5 miles east northeast from Icy Cape the water in no place of sufficient depth to float our lightest draft vessel with a clean hold, in many places not more than 3 feet.

Before knowing your vessels were in sight of Icy Cape we lightered the brig *Kohola* to her least draft, also the brig *Victoria*, hoping we should be able to get one of them into clear water to search for some other vessel to come to our aid in saving some of our crews. Both vessels now lie stranded off Wainwright Inlet.

That was our last hope, until your vessels were discovered by one of our boat expeditions. Counting the crews of the four wrecked ships we number some 1,200 souls, with not more than three months' provisions and fuel; no clothing suitable for winter wear. An attempt to pass the winter here would be suicidal. Not more than 200 out of the 1,200 would survive to tell the sufferings of the others.

Looking our deplorable situation squarely in the face, we feel convinced that to save the lives of our crews a speedy abandonment of our ships is necessary. A change of wind to the north for twenty-four hours would cause the young ice to make so stout as to effectually close up the narrow passage and cut off our retreat by boats.

We realize your peculiar situation as to duty and the bright prospects you have for a good catch in oil and bone before the season expires, and now call on you, in the voice of humanity, to abandon your whaling, sacrifice your personal interests as well as those of your owners, and put yourselves in condition to receive on board ourselves and crews for transit to some civilized port, feeling assured that our Government, so jealous of its philanthropy, will make ample compensation for all your losses. We shall commence sending the sick and some provisions to-morrow. With a small boat, and near 70 miles for the men to pull, we shall not be able to send much provisions.

Feeling confident that you will not abandon us,

We are, respectfully, yours,

HENRY PEASE, Jr.

(With 31 other masters).

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EXHIBIT E.—United States Government to owners Hawaiian bark *Arctic*, C. Brewer & Co., agents, Dr.

For breaking up the whaling voyage on the 13th of September, 1874, rescuing the officers and crew of the following American whaleships in the Arctic Ocean and passages from the Arctic Ocean to Honolulu. H. I., arriving at Honolulu, October 23, 1871: *Gay Head*, of New Bedford; *Reindeer*, of New Bedford; *Elizabeth Swift*, of New Bedford; *Eugenia*, of New Bedford; *Roman*, of New Bedford; *J. D. Thompson*, of New London.

List of officers and crew of *Eugenia*, of New Bedford: Captain Nye, Horace Sherman, I. Connor, Frank Rodgers, W. Brown, I. Whitford, G. Harrigan, Bob Tahiti, M. Baptister, G. White, William Case, H. Handy, James, I. Dearman, R. Meagher, I. S. Russel, I. Wheatney, I. Lary, Pedro Acosta, Tin Arsd, Antone Lord, I. Williams, Chas. Snvellue, Jas. K. Polk, Manu, Lono, Komoku, Moku, Nakia, Opuka, Opihabu, I. I. Nye, Amandus Pesphu, S. H. Everett, Chas. A. Scales, Joe, David—37 men.

List of officers and crew of *Reindeer*, of New Bedford: Capt. B. F. Loveland, John Rogers, Seth H. Ingals, Henry G. Dexter, Manual Cahal, Henry M. Diman, Edwd. M. Frasier, Albert Bentley, M. F. Francis, Antone J. Gonsoles, Joseph Rose, Johking, Jack o' Clubs, Manuel Leland, Antone Vera, States Joseph, Thos. Estilo, Chas. Haidaeppe, Manual Baptiste, Jas. Daggan, Jos. F. Francis, John Matteson, John Buckhart, Geo. E. Sweatland, Jas. A. Benton, Antone Joseph, John Dosvare, M. Sullivan, Joel Emerson, Henry Antone, J. G. Dexter, Dick, Henry, Louis, John, Uia, Naukana, Charley, Bill Josephine—39 men.

List of officers and crew of *Elizabeth Swift*, of New Bedford: Captain Bliven, C. E. Keyas, J. De la Cruz, J. Jones, I. E. Carter, Sam Brown, I. Brown, I. Jacobs, Pedro Leon, I. Baptiste, T. De Barras, Kohinue, Kamapua, Moku, Kakelanela, Daniela, Koui, John, Daniela 2d, Dick, Jim, Lahilea, Mahoe, Kaanui, Peakea, Iekapo, Kahele, Kaiana, D. B. Adams, Jose Ancronte—30 men.

List of officers and crew of *J. D. Thompson*, of New London: Capt. Chas. E. Allen, A. Dickman, Matua, J. Silva, M. Raymond, E. De Croz, J. Baptiste, Sam Balabola, I. Manillo, V. De la Cruz, Geo. Anderson, Loni Victor, A. Perera, Jose Pedando, M. Serva, J. Madero, I. Daniela, A. Joseph, E. De La Rosa, C. R. Smithies, Thos. Randall, J. Quentinello, Patrick Kearney, Louis G. Truckam, Andrew Peterson, Thos. Wright, Edwin Marvin, Jos. Jamerson, Job Stewart, Jas. Swan, Wm. Brooks, Henry Wilmot, Richard Ward, Carl Holse—34 men.

List of officers and crew of *Gay Head*, of New Bedford: Captain Kelly, R. Gifford, Jas. Carter, W. F. Macomber, Judas Gates, Frank Gomey, Antoine de Somba, W. F. Worth, Jacob Hoffner, John Chinaman, Don Magul, John Cornelius, D. C. Pratt, Jas. Seymour, Wm. Armstrong, John Armstrong, I. F. Anderson, John Rolinson, Edward Mackey, John Southerland, Oliver H. West, Wm. Mulla, John Frates, Alfino Cruz, John Rolinson 2d, C. F. Hathaway, Manuel Joequin, G. W. Wordell, Manuel King, Verto Manuel, Jos. Brownell, John Williams—32 men.

List of officers and crew of *Roman*, of New Bedford: Mr. Sylva, Lachan Roderrick, Frank Vera, Antone Gosalva—4 men.

## RECAPITULATION.

Thirty-seven men from *Eugenia*, 39 from *Reindeer*, 30 from *Elizabeth Swift*, 34 from *J. D. Thompson*, 32 from *Gay Head*, 4 from *Roman*—173 in all, at \$35 each, United States gold coin, \$6,160.

UNITED STATES CONSULATE,  
Honolulu, H. I., October 31, 1871.

I, the undersigned, consul of the United States of America for Honolulu and the dependencies thereof, do hereby certify that I am personally acquainted with the fact that the Hawaiian whaling bark *Arctic*, of Honolulu, did arrive in this port on the 23d instant, having on board 176 wrecked seamen from the various wrecked American whale ships in the Arctic seas, whom she landed at this port, and I further certify that under the circumstances the sum of \$35 for each man which is claimed as compensation for rescuing and bringing said seamen from the Arctic Ocean to this place is just and equitable.

Given under my hand and the seal of this consulate the day and year above written.

[L. S.]

C. S. MATTOON,  
United States Consul.

Please pay the within amount of \$6,160 in United States gold coin to Messrs. Charles Brewer & Co., Boston.

C. BREWER & CO.

EXHIBIT F.—Value of oil and bone, being estimated average catch for the portion of the whaling season lost in consequence of leaving whaling grounds with the shipwrecked men.

900 barrels whale oil, at 75 cents per gallon .....	\$21,262.50
16,000 pounds whalebone, at \$1.75 per pound .....	28,000.00
Loss and damage to ship .....	1,500.00
Total .....	50,762.50

## EXHIBIT G.

HONOLULU, *Island of Oahu, Hawaiian Islands ss:*

A. N. Tripp, being duly sworn, says he was the master of the Hawaiian whaling bark *Arctic*, owned by Brewer & Co., of Honolulu, Hawaiian Islands; that he was the master of the said bark *Arctic* on her late cruise to the Arctic Ocean in the business of whaling; that on the 11th day of September, 1871, this deponent went to an anchorage south of Blossour Shoals in company with the barks *Progress* and *Midas*; that on the 12th day of September, 1871, this deponent noticed the colors of the bark *Progress* were set at half-mast; that he lowered a boat and went aboard of the said bark *Progress*, and while there was informed that a boat from the northern fleet had brought a letter stating that a large number of American whaling ships, over 30 in number, were icebound off Wainwright Inlet and Point Belcher, to the northward of where the said bark *Arctic* was then lying, and beseeching the masters of the whaling vessels lying to the southward of them to work their way clear of the ice and there to the southward await the arrival of the ships' companies of the said fleet of vessels, for the wind was then blowing fresh from the southwest, was forcing the floes of ice more and more on the ships which were anchored near the shore, and it was very certain that they would all be wrecked by the ice or have to be abandoned.

This deponent, knowing from the appearance of the ice and the direction of the wind, that the wrecking and abandoning of said vessels would undoubtedly take place, and knowing that in such case the wrecked ships' companies would have no other means of rescue from certain death than that afforded them by his vessel, the *Arctic*, and the other six vessels which were clear of the ice, to wit, the *Chance*, the *Daniel Webster*, the *Midas*, the *Lagoda*, the *Europia*, and the *Progress*, accordingly, after consultation with the masters of the *Midas* and *Progress*, an agreement to the same effect having been made, this deponent concluded to break up and abandon his voyage for the purpose of saving the wrecked ships' companies aforesaid, sailing immediately and making every preparation to receive his proportion of the shipwrecked men when they should arrive.

Between 7 and 8 o'clock on the morning of the 14th day of September, 1871, the deponent brought his vessel to an anchorage, in company with the bark *Progress*, a few miles south of Blossour Shoals, clear of the ice; the other five vessels mentioned before came along and anchored at different times through the day; and on the said 14th day of September, 1871, the ships' companies from the icebound and abandoned fleet of vessels commenced to arrive and were distributed on board the vessels which were waiting to receive them as they arrived from the north, until, on the afternoon of the 16th day of September, 1871, this deponent had received on board his said ship, the *Arctic*, 185 men, consisting of Capt. Wm. Kelly, of the bark *Gay Head*; Captain Loveland, of the ship *Reindeer*; Captain Allen, of the bark *J. D. Thompson*; Captain Bliven, of the bark *Elizabeth Swift*, and Captain Nye, of the bark *Eugenie*, together with the officers and men belonging to the ships just mentioned; also Captain Newbery and 37 men belonging to the Hawaiian bark *Pai'a*, making a total of 222 men received from the whaling vessels which had been wrecked or abandoned as aforesaid off Wainright Inlet and Point Belcher in the Arctic Ocean.

This deponent having taken on board his vessel, the *Arctic*, the aforesaid ships' officers and crews, and sufficient food from the stores they had saved for the passage to Honolulu, and stopping only at Clover Bay for water, they proceeded to Honolulu, where they arrived on Monday, the 23d day of October, 1871, and on his arrival he turned over to Brewer & Co., the owners of said bark *Arctic* the men whom he had thus brought down from the Arctic Ocean.

This deponent says that on the said 11th day of September, 1871, when he broke up and abandoned his whaling voyage, for the reasons and objects aforesaid, the business of taking whales was just commencing; that whales were very plentiful and available; that deponent had taken four whales, and that, from his experience of many years as a whaling man in the Arctic Ocean, he knows and therefore avers and declares that, in consequence of abandoning the work of taking whales he lost a month of the very best of the whaling season for the year 1871, and, in fact, the only time of the year when whales are taken in the Arctic Ocean, and that, as his ship was well supplied with boats and other necessities and as he had a good complement of men, there was every prospect of his being able to take from 1,000 to 1,200 barrels of whale oil, and the proportion of whalebone was from 18,000 to 20,000 pounds.

A. N. TRIPP.

Sworn to and subscribed before me this 10th day of March, 1892.

[SEAL.]

A. W. RICHARDSON,  
U. S. V. and D. Consul-General.

[Senate Report No. 2188, Fifty-first Congress, second session.]

Mr. Spooner, from the Committee on Claims, submitted the following report:

The Committee on Claims, to whom was referred the bill (H. R. 10267) for the relief of the owners and crews of the American whaling vessels *Midas*, *Progress*, *Lagoda*, *Daniel Webster*, and *Europa*, having had the same under consideration, respectfully report that this bill has passed the House of Representatives during the present Congress. It was reported to that body from the House Committee on Claims. The report of that committee, which is hereby adopted, is as follows:

[House Report No. 2342, Fifty-first Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 10267) for the relief of the owners and crews of the American whaling vessels *Midas*, *Progress*, *Lagoda*, *Daniel Webster*, and *Europa*, having given the same, together with all the evidence and facts submitted, a very careful and thorough consideration, report as follows:

From the evidence and files we find that the owners and crews of said vessels have been diligently beseeching Congress for remuneration for their losses ever since the same occurred; that bills seeking such relief have been presented in almost every Congress, and that favorable reports have been made to the Forty-fifth, Forty-sixth, and Forty-seventh Congresses. We find from a careful examination of the evidence and reports that the report (No. 121) made to the third session of the Forty-fifth Congress contains and truly sets forth the leading facts, and we therefore adopt as our own such portions of said report as we consider necessary, as follows:

"These memorialists show that early in the month of September, A. D. 1871, all of said vessels were prosecuting whaling voyages in the Arctic Ocean, at a point about 10 miles northward of Blossom Shoals.

"The vessels had been fully and completely equipped for the business at great expense, and were then upon the whaling ground, fully and completely prepared for the successful prosecution of their voyage. That the season for taking whales upon that ground is from the 1st of September till the middle of October, and they had just commenced to take whales, which were plenty and available to capture, there being every prospect of a successful catch, amounting to a practical certainty, as near as may be.

"That while thus prosecuting their voyages the masters of said vessels received from the masters of some 30 American whaling vessels, which were lying about 60 miles farther north, a letter, a copy of which is hereafter given, announcing that their ships were hemmed in by an impassable barrier of ice which the winds had packed up, and they would be obliged to abandon them; that their provisions were insufficient to support the ships' companies until the next summer, even if they could withstand the rigors of the Arctic winter, and that their only chance for life was with the ships above named, which were outside the barrier. The letter is as follows, sent from said distressed ships:

"SHIP CHAMPION,

"Off Point Belcher, September 12, 1871.

"*To the Masters of the Ships in Clear Water South of Icy Cape:*

"GENTLEMEN: By a boat expedition which went out to explore the feasibility of a ship's passage to clear water, report there are 7 vessels south of Icy Cape in clear water whaling.

"By a meeting of all the masters of the vessels which are embargoed by the ice along this shore, as also those that have been wrecked, I am requested to make known to you our deplorable situation and ask your assistance.

"We have for the last fifteen days been satisfied that there is not the slightest possibility of saving any of our ships or their property, in view of the fact that the northern barrier of ice has set permanently on this shore, shutting in all the fleet north of Icy Cape, leaving only a narrow belt of water from one-quarter to one-half mile in width, extending from Point Belcher to south of Icy Cape. In sounding out the channel we find from Wainwright Inlet to about 5 miles east-northeast from Icy Cape the water in no place of sufficient depth to float our lightest-draft vessel with a clean hold, in many places not more than 3 feet.

"Before knowing your vessels were in sight of Icy Cape we lightered the brig *Kohola* to her least draft, also brig *Victoria*, hoping we should be able to get one of them into clear water to search for some other vessel to come to our aid in saving some of our crews. Both vessels now lie stranded off Wainwright Inlet.

"That was our last hope until your vessels were discovered by one of our boat expeditions. Counting the crews of the four wrecked ships, we number some 1,200 souls, with not more than three months' provisions and fuel; no clothing suitable for winter wear. An attempt to pass the winter here would be suicidal. Not more than 200 out of the 1,200 would survive to tell the sufferings of the others.

"Looking our deplorable situation squarely in the face, we feel convinced that to save the lives of our crews a speedy abandonment of our ships is necessary. A change of wind to the north for twenty-four hours would cause the young ice to make so stout as to effectually close up the narrow passage and cut off our retreat by boats.

"We realize your peculiar situation as to duty, and the bright prospects you have for a good catch in oil and bone before the season expires, and now call on you, in the voice of humanity, to abandon your whaling, sacrifice your personal interests as well as that of your owners, and put yourselves in condition to receive on board ourselves and crews for transit to some civilized port, feeling assured that our Government, so jealous of its philanthropy, will make ample compensation for all your losses. We shall commence sending the sick and some provisions to-morrow. With a small boat, and near 70 miles for the men to pull, we shall not be able to send much provisions.

"Feeling confident that you will not abandon us,

"We are, respectfully, yours,

"HENRY PEASE, Jr.,

"With thirty-one other masters."

"The memorialists say that but one answer could be made to such an appeal, and that after consultation the masters of the ships thus addressed determined to abandon their voyages and receive the shipwrecked crews, trusting in the justice and generosity of their Government to properly compensate them for their losses and expenses thus to be incurred for the purpose of rescuing shipwrecked American seamen.

"Preparations were immediately made for that purpose. The cutting stages were taken in, the cutting falls unreeved, casks shooked, and the vessels taken to an anchorage south of Blossom Shoals. That on the 11th day of September and days following the shipwrecked sailors were taken on board and the vessel proceeded with them to Honolulu.

"The United States by its laws has made provision and assumed the duty of maintaining and transporting shipwrecked American seamen; and your committee think it should do so; that it is proper and just that a great Government like our own should rescue and save its shipwrecked seamen. And your committee can see no material difference in this case than in an ordinary case of shipwreck; and your committee think these petitioners should be compensated fairly by the Government for their services and losses resulting from their humane work in saving these distressed American seamen.

"Your committee also find that these shipwrecked seamen were all taken to Honolulu by the memorialists; that they abandoned their whaling voyages entirely, and on the 14th day of September the shipwrecked seamen from the abandoned vessels began to arrive where the vessels of the memorialists were at anchor ready to receive them, and were distributed among the several vessels of the memorialists; and that on or about the 16th of September the memorialists set sail for Honolulu with the shipwrecked seamen from the wrecked fleet—which was an American whaling fleet—and that they all arrived at Honolulu about the 23d day of October, and the men so rescued were turned over to C. S. Mattoon, esq., United States consul at Honolulu.

"That when these claimants left the Arctic Ocean the business of taking whales was just commenced; that whales were unusually plenty and available to capture; that the usual period when whales can be captured in the Arctic Ocean commences about the 1st day of September and lasts until the middle of October, or thereabouts, in each and every year; that in consequence of abandoning said whale catching for the purpose of saving these men—these American seamen—the claimants lost the very best whaling season for the year 1871, and the only part of the year that is valuable for Arctic whaling.

"That the vessels of claimants were all well supplied with men and their vessels with boats and other necessities, and there was every prospect of claimants being able to take a large number of whales.

"That the said several vessels were all employed in transporting said seamen to Honolulu, and the expenses of the said claimants were very large in provisions for their said passengers, and much property was destroyed and vessels injured and damaged, the whole sum being as claimed—

## DANIEL WEBSTER.

900 barrels whale oil, 75 cents per gallon .....	\$21,262.50
16,000 pounds whalebone, at \$1.75 per pound .....	28,000.00
Loss of and damage to outfits and ship .....	1,500.00
	<hr/>
	50,762.50

## LOSSES OF THE LAGODA.

900 barrels whale oil, at 75 cents per gallon .....	21,262.50
16,000 pounds whalebone, at \$1.75 per pound .....	28,000.00
Loss and damage to outfits and ships .....	120.75
Loss of anchor, 2,500 pounds, at 6 cents .....	150.00
	<hr/>
	51,033.25

## LOSSES OF EUROPA.

1,200 barrels whale oil, at 75 cents per gallon .....	28,350.00
21,000 pounds whalebone, at \$1.75 per pound .....	36,750.50
Loss and damage to outfits and ship; casks destroyed .....	1,000.00
Sails destroyed .....	3,000.00
Tubs, strainers, whaling gear, cordage, cutting falls, etc .....	1,900.00
Spars, boards, and shooks burned for cooking at try works and loss of fixtures pertaining to spars .....	500.00
Anchor and chain lost in getting away from ice .....	500.00
	<hr/>
	71,100.00

## LOSSES OF BARK MIDAS.

900 barrels whale oil, at 75 cents per gallon.....	21,262.50
16,000 pounds whalebone, at \$1.75 per pound.....	28,000.00
Loss of anchor, 2,600 pounds, at 6 cents.....	156.00
Loss of 15-fathom chain, 1½ inches, 128 pounds to the fathom, 1,920, at 7 cents.....	134.40
Loss and damage to outfits and ship.....	1,500.00
	<hr/> 51,052.90

## LOSSES OF THE BARK PROGRESS.

900 barrels whale oil, at 75 cents per gallon.....	21,262.50
16,000 pounds whalebone, at \$1.75 per pound.....	28,000.00
Loss of anchor, 2,800 pounds, at 6 cents.....	168.00
Loss of 15-fathom chain, 1½ inches, 156 pounds to the fathom, 2,340 pounds, at 7 cents.....	163.80
Loss and damage to outfits and ship.....	1,500.00
	<hr/> 51,094.30

While the above is an itemized statement attached as a claim in case of each vessel, yet your committee find from an examination of the affidavits of George F. Marvin, master of the *Daniel Webster*, Capt. Stephen Swett, master of *Lagoda*, Capt. Thomas Mellen, master of *Europa*, Capt. Charles Hamill, master of *Midas*, and Capt. James Dowden, master of the *Progress*, that the reasonable average catch for each of said vessels for the remainder of the season of 1871, after having to abandon their work and rescue the crews of said stranded vessels, would have been for oil and bone, at the prices above stated, which we find to have been the home market prices at said time, the sum of \$90,000.

Your committee find from the evidence that the number of officers and men rescued by each of said vessels was as follows:

	Men.
By the <i>Midas</i> .....	143
By the <i>Progress</i> .....	188
By the <i>Lagoda</i> .....	170
By the <i>Daniel Webster</i> .....	155
By the <i>Europa</i> .....	214
Being a total of.....	<hr/> 900

A favorable report, numbered 908 was given claimants at the second session of the Forty-sixth Congress, and from said report we quote the following:

"These five vessels had sailed from New Bedford and Edgartown thoroughly equipped for a four years' whaling voyage in the northern Pacific Ocean. They had a large and expensive outfit of men and materials and provisions. Their position in all respects as to equipment, losses, and the value of their services in rescuing the shipwrecked seamen was much different from that of merchant vessels. As has been shown by the memorial and other testimony, their whole year's work, so far as gain is concerned, must be prosecuted in the six weeks succeeding September 1. All their year's gain must be made during that time, and if for any reason the prosecution of their business during that time is broken off, all they can do is to return to San Francisco or Honolulu and remain in idleness and at great expense until the succeeding year. These vessels had arrived on the whaling ground fully prepared to prosecute their business of whaling. The whales were plentiful in all directions.

"Suddenly, while the prospects are so favorable for these vessels, a call is made upon them for succor by 1,200 shipwrecked seamen. These men have no money to promise for the rescue. They are shut up in the arctic seas with an arctic winter before them; and the sure result, if they are not rescued by these whaling vessels, is a slow and lingering death either by starvation or by cold. The masters of these vessels, the owners of which appear here as claimants, have this alternative—on the one hand, of turning their backs on these men and leaving them to die, while they go on in the prosecution of their voyages, and in making money for themselves, or, on the other, the sacrifice of their gains to rescue these shipwrecked sailors. The choice was made without a moment's hesitation. The masters, with the full consent of all the crews, decided at once to abandon their voyages and to rescue these men, entirely regardless of self and without a murmur. They decided instantly to give up all hope of profit and all hope of reimbursing themselves for their expenses, and to convey these men to a place of safety.

"If they had adopted any other course a cry of indignation would have gone up from the whole civilized world, which would have justly accused these claimants of a worse crime than murder—that of abandoning these men to a slow and horrible death.

"Your committee also find that these shipwrecked seamen were all taken to Honolulu by the memorialists; that they abandoned their whaling voyages entirely, and on the 14th day of September the shipwrecked seamen from the abandoned vessels began to arrive where the vessels of the memorialists were at anchor ready to receive them, and were distributed among the several vessels of the memorialists; and that on or about the 16th of September the memorialists set sail for Honolulu with the shipwrecked seamen from the wrecked fleet—which was an American whaling fleet—and that they all arrived at Honolulu about the 23d day of October, and the men so rescued were turned over to C. S. Mattoon, esq., United States consul at Honolulu."

These petitioners also received a favorable report in the Forty-seventh Congress, first session.

This report appears to be the same throughout as the report of the Forty-sixth Congress, second session. The facts recited appear to be precisely the same, and the conclusions and recommendations are the same. We therefore make no quotation from it.

As bearing upon the matter of the absolutely unavoidable necessity these five whaling vessels were under of abandoning their whaling season and rescuing these 900 shipwrecked men (all the facts in regard to which are so fully and so eloquently given in the above extracts from the several reports of Congress), we make the following observations, to wit:

At the time of the disaster to the thirty-two whaling vessels referred to in the above quoted letter, signed "Henry Pease, jr., with thirty-one other masters," the Government had no refuge station in that region, and had not at that period established any patrol relief vessels in those waters.

As throwing light upon the condition of things in that regard in the North Seas at that time, at this point in our report we introduce a resolution of the House of Representatives of the Fiftieth Congress, second session, together with a letter from the Secretary of the Treasury in reply to said resolution. (See Ex. Doc. No. 48, Fiftieth Congress, second session.)

*Letter from the Secretary of the Treasury, with inclosures, in response to a resolution of the House calling for information relative to relief, by the Revenue-Cutter Service and the Life-Saving Service, to American whaling and fishing vessels in Bering Sea or the Arctic Ocean.*

TREASURY DEPARTMENT, January 3, 1889.

SIR: The resolution of the House of Representatives "that the Secretary of the Treasury be requested to inform the House what, if any, relief can be furnished by the Revenue-Cutter Service and the Life-Saving Service to American whaling and fishing vessels wrecked in Bering Sea or the Arctic Ocean, and what, if any, legislation is necessary to make such relief available and effective," has received the careful consideration of the Department.

The whaling industry in the locality indicated, employing more than forty vessels and 1,500 men, is entitled to all the practical assistance that the Government can afford, not only from its increasing value and importance, but by reason of the very hazardous nature of the employment. Revenue steamers have taken on board in the Arctic regions since May, 1882, 354 persons, mostly wrecked whalers, whom it was necessary to land at San Francisco, while during the same period the crews of other whalers in these waters unable to escape the dangers of the ice have perished, with but few and in some cases no survivors.

Some legislation has been sought, and a bill (H. R. 1240) to credit the Revenue-Cutter Service for transportation home by United States revenue vessels of shipwrecked seamen from the Arctic regions or the Territory of Alaska has been favorably reported to the House of Representatives.

This bill should also provide for the reimbursement of the officers of any United States vessel for the supplies which they may furnish to the officers of wrecked vessels who may be unable to pay for their subsistence while being transported to a place of safety.

The passage of the bill above mentioned, with this addition, is earnestly recommended.

In my annual report on the state of the finances attention was called to the necessity of providing a suitable amount for the refitting of the revenue steamer *Bear*, which has been in service for three years in Arctic cruising. The valuable

work of this vessel, and also of the U. S. S. *Thetis*, during the last season in the Arctic can scarcely be overestimated. There can be no doubt that very great help to imperiled whalemén could be rendered by the cruising each year of two such vessels, well found and supplied, on the northwestern whaling grounds of this country, as experience shows that they are likely at any time to become the surest and safest places of refuge upon the occurrence of wrecks.

It would be possible for these vessels to remain on the whaling grounds until the close of the season and the safety of the whaling fleet had been assured. This course could be directed with judgment, so as to afford a reasonable protection, without, however, emboldening the adventurous whalemén for that reason to incur additional risks.

The attention of the Department has been frequently called, by memorial and petition, to the necessity of establishing one or more stations of refuge upon the mainland to supply, in case of shipwreck, shelter and subsistence. The propositions that have been made differ widely as to the proper method of carrying such a plan into execution. Recommendation was made to the Department in 1884 by Captain Healy, United States Revenue Marine, then commanding the revenue steamer *Cornin*, that supplies should be stored at Point Barrow, under the direction of the Life-Saving Service and the Revenue Marine, with a suitable guard of men left to winter there.

In a letter to the Secretary of the Navy, August, 1888, writing from the *Thetis*, in the Arctic, Lieut. Commander W. H. Emory, United States Navy, says:

"I beg leave to call the attention of the honorable Secretary of the Navy to the great importance of establishing a life-saving station at Point Barrow. Were it not for the accidental visit of the *Thetis* and the *Bear*, there might be great loss of life at this point, and the wrecked men would be left entirely without sustenance."

At this time the *Bear* had on board the shipwrecked crews of the barks *Mary and Susie*, *Young Phoenix*, and *Fleetwing*, and the schooners *Jane Gray* and *Juo*: in all, 160 souls.

In connection with this subject attention is called to a valuable communication from Commodore G. W. Melville, Engineer in Chief, United States Navy, a copy of which is herewith submitted.

The expense of constructing these refuge stations in the Arctic and of guarding them, if provisions, clothing, and fuel are to be stored there, would be large and can not be accurately estimated for at this time. It is judged from the interest felt in this matter by the owners of whaling vessels that they could be depended upon to furnish such transportation for material and stores as the Government vessels could not readily carry, and in this way a reasonable appropriation might be made to accomplish a desirable result.

The attention of Congress is directed in connection with this subject to the advisability of offering fixed sums of money as rewards for the rescue of shipwrecked whalemén by private parties on the Arctic Ocean. This bounty, if it might be so called, would have the great merit of being bestowed where most needed, and if a plan of this character were put in operation it might prove of more advantage than any other experimental expenditure.

The hardy mariners who visit the inhospitable regions of the north are as ready as any other seamen to brave danger and extend succor to the extent of their ability; but as circumstances now are it can readily be seen that when a disaster occurs those nearest to the scene are subject to a trial of no ordinary nature. They might have to abandon all chances of a profitable season if they saved and took on board a large number of shipwrecked men, as then the consideration of their own safety would compel them to leave the whaling grounds and return home, unless they were relieved of those whom they had rescued by a Government vessel or able to transport them to a station of refuge. It is also possible that in certain cases the knowledge of definite rewards, if communicated to the natives of that part of the world, might cause them to make searches and attempt rescues at a time when no other aid could be dispatched to those in peril.

Respectfully, yours,

C. S. FAIRCHILD,  
Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
Washington, D. C.

We further observe that immediately after the foregoing letter from the Secretary of the Treasury had been received by the House of Representatives, to wit, on the 15th day of the same month, a favorable report in regard to the matter of establishing a refuge station in those regions was committed to the Committee of the Whole House. (See H. Report No. 3751, Fiftieth Congress, second session.)

As showing the imperative necessity which the committee who had the consideration of the matter in charge considered the Government to be under to originate and establish a species of relief for whaling vessels in those regions (a relief, we remark in passing, that did not exist at the time the rescue of these 900 seamen was made by the petitioners in the case before us, nor was there then any relief by Government vessels as has been since furnished by the *Thetis*, *Bear*, *Rush*, *Corwin*, and *Rodgers*, so that the owners of these five whale ships supplied vastly more relief than has ever been extended by all the modes of relief ever furnished by the Government, if we count the number of lives saved), we make the following quotations from said report:

"With reference to the proposed establishment of stations of refuge at suitable points on the coast of Alaska bordering on the Arctic Ocean there seems to be a unanimous concurrence of opinion as to the necessity for immediate action on the part of Congress. The whaling industry of the United States, representing a capital of over \$2,000,000, and furnishing employment to from twelve to fifteen hundred seamen annually, is carried on in the waters of the Arctic Ocean under difficulties of navigation which are magnified by the unknown character of the region and menaced by dangers which are increased a hundredfold by the remoteness and isolation of the scene of its labors.

"From statistics gathered from the most authentic sources it appears that no less than 76 whaling vessels have been lost in the Arctic Ocean during the period from 1868 to 1888, or an average of nearly 4 vessels per year. The greatest number of ships employed in whaling during this period was 53 and the least number 16. The average number of vessels employed annually was 32.7 and the percentage of losses was 12.2 per cent.

"From testimony of shipmasters who have suffered disaster in the Arctic Ocean it appears that the ordinary resources of the sailor, such as escape by small boats to the shore and communication with settlements, is of no avail in these uninhabited and desolate regions. If by extraordinary exertions they succeed in reaching land, it has never happened that they have been able to transport sufficient food over the rough ice floes to last them any length of time, and the desolate character of the country, trackless and almost entirely devoid of game, would make the building of houses and the procuring of food for a long journey simply impossible.

"The natives of Alaska in this region, while being friendly, are few in number, and could not be depended upon to furnish succor to even a small number of shipwrecked seamen. \* \* \*

"In the cases of disaster to vessels of the whaling fleet where assistance has been rendered and the lives of the crews saved it has been during the summer season, while the revenue cutter which is annually dispatched to these waters was in the field. The wonderful record of Captain Healy, of the United States Revenue Marine, in rescuing and bringing back to the United States over three hundred and fifty seamen, is a glorious tribute to the energy and indomitable courage of that officer and the efficiency of our Revenue-Marine Service. But human endeavor has its limits. When the sea is frozen over, no power on earth can reach shipwrecked vessels to render assistance. We only help them, and the only chance of sustaining life through the long winter and until the succeeding year's open water affords a passage for relief vessels is to find some shelter on shore.

"From the experience of shipmasters and the recommendations of Government officers well acquainted with Arctic matters it appears necessary that stations of refuge suitably equipped and furnished with clothing and food for the subsistence of at least 100 men for nine months should be established. \* \* \*

"It is not proposed in establishing stations of refuge to supersede the employment of Government vessels in the work of relief of the whaling fleet during the summer season, but it is intended, on the contrary, to render more efficient this invaluable service by supplying means whose necessity has long been felt by which seamen wrecked early in the season could be placed on the shore and sustained until the time for the departure of the protecting vessels from the Arctic had arrived. In the absence of such places of refuge the *Bear* this year was compelled to leave the Arctic a month earlier than usual in order to bring back 106 seamen who had been rescued from four vessels shipwrecked at Point Barrow early in August.

"In connection with this subject of relief it is of interest to note the case of the bark *Ohio*, of New Bedford, which, with a crew of 35 men, is at present missing, and was last seen near Cape Lisburne, in the Arctic Ocean, and has doubtless been wrecked in that vicinity. If any of her people escaped, they are on shore utterly helpless and beyond the reach of assistance until spring. It is earnestly hoped that steps shall be taken at once to put the United States revenue cutter *Bear* in commission as early in the season as possible, and to dispatch her north in search of this crew of shipwrecked and probably starving seamen." \* \* \*

This case has been before Congress now about seventeen years. The rescue of these 900 shipwrecked human beings occurred over eighteen years ago. We are informed by the managing owner of one of these five rescuing vessels, who is now in person before this committee, that although the matter has been in Congress all these years, it has been left chiefly to take care of itself, and he says that several of the parties in interest have been in financial distress, some of the instances being directly traceable to the misfortune which brings them before Congress with this petition, and he also says that the managing owners of all these vessels have hoped from Congress to Congress that it would be unnecessary for them to appear personally before the committee.

Full and complete statements supported by affidavits have, however, been freely furnished to the previous committee.

These statements and affidavits are now on file with the papers in the case, and they appear to this committee to cover all the material points; or, in other words, the claim appears to be fully fortified and sustained in all its facts. The papers on file are very voluminous, and a fair inference from the reports of former committees, as above quoted from, is that the papers were entirely satisfactory.

This committee is abundantly satisfied that it is simply just and right that the Government should treat these petitioners with generous magnanimity. They have been patient waiters. The great delay in receiving relief appears not to have been their fault at all. Whatever the Government shall do for them in the nature of a reimbursement of their great losses or of those losses coupled with a consideration as a reward, as recommended in such cases by the Secretary of the Treasury (see Executive Document No. 48, Fiftieth Congress, second session, quoted from above), it will be observed, comes at a late day, and that these petitioners were justly entitled to such reimbursement and reward speedily after their great misfortune. These losses to them occurred a great many years ago, and it is reasonable to believe that at least a portion of these owners, officers, and crews suffered a very considerable pecuniary embarrassment in consequence of this disaster to their whaling voyage—a disaster involving not only the loss of their annual "catch," but also the loss of at least a considerable portion of their expensive outfit.

Your committee find that this Government has on various occasions recognized the justice of furnishing relief to the owners of vessels which have abandoned their own voyages and in a spirit of humanity rescued the crews of stranded vessels, a few of which we cite, viz:

The Forty-seventh Congress, second session, in accordance with the recommendation of the Secretary of the Navy, awarded to William Lewis, of New Bedford, Mass., owner of the whaler *North Star*, the sum of \$20,000 for rescuing twenty, or possibly a few more—say twenty-two in all—shipwrecked persons in 1882. (See Stat. L., vol. 22, p. 620.)

We also append hereto a copy of an extract from the log of the *North Star* for the purpose of showing the number of persons rescued and the length of time the *North Star* was occupied and detained in the affair. (See House Report No. 1960, Forty-seventh Congress, second session, p. 61.)

The log is as follows:

"Copy of log of bark *North Star* from Monday, May 8, to May 18, 1882.

"*Monday, 5. 8.*—Commences with a calm; the ship under steam, lying off Plover Bay; saw four whales; the natives came on board with two letters from the captain and first lieutenant of the United States steamer *Rodgers* stating that the steamer was destroyed by fire on the 30th of November, 1881, and that all hands were living with the natives and that they were very short of provisions, and they wanted relief as soon as possible. We were about to proceed up the gulf, but gave it up and started to their relief with all possible dispatch.

"*Tuesday, 5. 9.*—Commences with a calm; the ship under steam, working up to St. Lawrence Bay; at 4 a. m. we were beset in the ice about 6 miles from South Head; there were five men of the *Rodgers* crew came on board with some natives, and one of them went back to carry the news to the rest of them. Latter part blowing very strong from the SE. with snow, the ship lying packed in the ice with all sails furled. The men that came on board report that the crew are all scattered along the coast. Captain Berry has started with dogs and sleds for Colusion Bay and is expected back every day.

"*Wednesday, 5. 10.*—Blowing a gale from the SE.; the ship beset in the ice; six more men came on board. We cleared out the between decks and built a place for the wrecked men to sleep; plenty of natives on board trading.

"*Thursday, 5. 11.*—Strong breeze from the SSW.; the ship packed in the ice. The executive officer, doctor, and chief engineer came on board and three more,

the men of the *Rodgers* crew. They report that Captain Berry has gone overland to St. Petersburg. The executive officer returned to North Head to await our arrival there, when they will all be ready to embark for St. Michaels.

"*Friday 5, 12.*—Blowing a strong breeze from the S.; the ship fast in the ice; more of the men came on board with the natives.

"*Saturday, 5, 13.*—Commences with calm; the ice opened between the ship and the shore; we are closed in about a 5-mile pack and drifting NW. about  $1\frac{1}{2}$  miles per hour; four more of the *Rodgers* crew came on board.

"*Sunday, 5, 14.*—Light breeze from the NE.: first part employed in cutting the ice around the ship; at 2 a. m. the pack ice brought up against the floe and commenced to open; got up steam and backed out into clear water: steamed up to floe 4 miles from North Head, and all of the crew of the *Rodgers* came on board; ends with a thick fog; the ship fast to the floe. all ready to start when it clears up.

"*Monday, 5, 15.*—At 8 a. m. of the first part the fog lifted; we hauled in the ice hooks and steamed to the sd.; at 11 o'clock spoke the United States revenue cutter *Corwin*, bound for Cape Serdze to succor the *Rodgers* crew. Captain Haley came on board at 1 a. m.; we transferred the wrecked men to the *Corwin*, and received on board Captain Colson, of the bark *Sappho*, wrecked in the ice off Plover Bay; parted with the *Corwin*, who started for Onalaska with the *Rodgers* crew and fifteen men of the *Sappho* crew; latter part working to the wrd."

The next precedent we will refer to is that of the schooner *Era*, C. A. Williams and others, of New London, Conn., owners. In this case the Fiftieth Congress, second session, awarded \$13,500 for the rescue of twenty-three or twenty-four persons, or \$562 for each person rescued. (See Stat. L., vol. 25, p. 1198; also Senate Report No. 621, Fiftieth Congress, first session.)

From this report we make a single quotation for the purpose of showing the views of a Senate committee of that Congress as to the proper duty of our Government toward parties engaged in this class of rescue.

We quote from the report by Senator Hoar as follows:

"The committee are of opinion that, as a matter of sound public policy, the United States should, to a reasonable extent, reimburse private owners of vessels for expense and loss of voyage and profits incurred in the rescue of shipwrecked American crews in the Arctic Seas. We do not think that the provisions for sending home sailors in distress is the limit of the duty of the United States in such a case. We have no doubt that if it were known that an American crew were shipwrecked, icebound, and in danger of starvation in Arctic Seas their countrymen would demand of the Government that a vessel should be dispatched at the public expense for their rescue. It can hardly be expected that motives of humanity would be sufficient to induce the masters of vessels to ruin their voyages and risk the displeasure of their employers, and thereby the loss of their position, to save lives under a government which would repudiate its own obligations in such cases.

"It is believed that this policy is that of Great Britain and all other important maritime nations. Precedents are to be found for the reimbursement by our country of expense incurred by foreign, and even barbarous, nations in rescuing American seamen under such circumstances.

"There are also precedents in reimbursing American owners of ships in like cases."

The remaining precedent that we will refer to is that established by the present Congress in the case of the British whaler *Chance*. This case, reported by this committee, has become a law, although it has not as yet appeared in the published laws. In this case an award was made of \$16,000, the full amount asked for by the petitioners. The number of persons saved was ninety-six, the award amounting to \$166 for each person saved. (See House Report No. 336, first session Fifty-first Congress.)

The three precedents above referred to appear to completely match the case now before this committee. They have all been established by recent Congresses—all since the dates of the former reports in this case.

So that this committee has for its guidance, and as an aid to its judgment, not only these precedents, but also the results of the exhaustive investigations into the merits of this case by the several former committees.

It is a matter of common knowledge that all Congresses have acted with magnanimity and with great liberality toward parties who have served their country by acts of common humanity at times and under circumstances which required an utter abandonment of all regard to personal interests or considerations.

The Greely expedition, for scientific purposes, to the Arctic regions, consisted of twenty-five men. They were located at Fort Conger, Discovery Harbor, Lady Franklin Bay, in 1881.

In consequence of the failure of the relief party, which was sent to them in 1883, by the loss of the ship *Proteus*, that year, early on the following year an expedition was sent out by the Government for their relief under Commander W. S. Schley. The vessels employed were the *Thetis*, *Alert*, *Bear*, and the coaling vessel *Loch Garry*.

In consequence of the failure of the relief expedition with supplies the year previous, great anxiety was experienced for their safety. The vessels just named were sent by the Government with most commendable earnestness to reach these men alive, if possible. To fit out this last expedition cost the Government \$750,000. The expedition was successful and brought home all of the party of twenty-five who were alive, namely, Lieutenant Greely and six of his party.

To show how carefully this Government regards the lives of its employees and defenders, we introduce the following telegram from the Hon. William E. Chandler, then Secretary of the Navy:

WEST POINT, N. Y., July 17, 1884.

Commander W. S. SCHLEY:

Receive my congratulations and thanks for yourself and your whole command for your prudence, perseverance, and courage in reaching our dead and dying countrymen. The hearts of the American people go out with great affection to Lieutenant Greely and the few survivors of his deadly peril. Care for them unremittingly, and bid them be cheerful and hopeful on account of what life yet has in store for them. Preserve tenderly the remains of the heroic dead; prepare them according to your judgment and bring them home.

"W. E. CHANDLER,  
"Secretary of the Navy."

What an expenditure, and what tender language in behalf of the rescue of this party, only bespeaks the highest encomiums in favor of this Government of a free people. (Report of Winfield S. Schley, commander, United States Navy, 1884.)

If this nation will spend so much money for only so few of its good citizens or employees, what limit would there have been to the expenditure and the thrill of anxiety and tenderness in behalf of the 1,200 American shipmasters, officers, and crews of 32 whale ships, deprived of all communication with the outside world, in a helpless condition in the Arctic Ocean, a large percentage of whom had served the nation in the Army and Navy during its hour of peril.

The joint resolution under which the said sum of \$750,000 was expended for the relief of these twenty-five men was approved February 13, A. D. 1884, and is as follows:

[PUBLIC RESOLUTION—No. 10.]

JOINT RESOLUTION making an appropriation for the relief of Lieutenant A. W. Greely and his party, composing what is known as the Lady Franklin Bay Expedition to the Arctic Regions.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President be, and is hereby, authorized to prepare and dispatch an expedition to the coast of Greenland, Smiths Sound, or Lady Franklin Bay, for the purpose of relieving and bringing home Lieutenant A. W. Greely and party: and that for this purpose the purchase of not exceeding three vessels is authorized, and all expenditures necessary for manning, equipping, and supplying them, and for any land journeys which may be required, and such sums as may be necessary to effect the object of this resolution, are hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

The vessels purchased to be sold after their return and the money arising from such sale covered into the Treasury. And the President shall submit to Congress on the first Monday of December, eighteen hundred and eighty-four, a full and detailed account of all expenditures and outlays made on account of this appropriation.

Approved, February 13th, 1884.

Yet this was not all. In a little more than two months later another act was passed by the same Congress authorizing the Secretary of the Navy to offer a reward of \$25,000 (\$1,000 per man) to such person or persons as shall discover or rescue "or satisfactorily ascertain the fate of the Greely expedition," and is as follows:

[PUBLIC—No. 19.]

AN ACT authorizing the Secretary of the Navy to offer a reward of twenty-five thousand dollars for rescuing or ascertaining the fate of the Greely expedition.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Navy be, and he is hereby, authorized and directed to make proclamation immediately, and cause said proclamation to be published and distributed as thoroughly as may be in such foreign ports as are interested in navigation and traffic in the arctic seas, that the Government of the United States will pay a reward of twenty-five thousand dollars, to be equitably paid or distributed, to such ship or ships, person or persons, not in the military or naval service of the United States, as shall discover and rescue or satisfactorily ascertain the fate of the Greely expedition; but such proclamation shall not be made in terms that will involve the United States in any future liability or responsibility beyond said reward, or will induce unprepared vessels to incur extraordinary peril or risk. And the determination of the Secretary of the Navy as to the right of any person to said reward or a share thereof shall be conclusive upon all persons.

Approved, April 17, 1884.

But except for the presence of these five American whale ships no expenditure of money, however great, would have been of any avail to rescue these 1,200 shipwrecked seamen from the fate so graphically described in a letter from General Greely, addressed to Hon. Samuel Osborn, jr., a copy of which is as follows:

WASHINGTON, D. C., June 7, 1890.

DEAR SIR: Referring to the relief by American vessels of 900 or more American whalers, shut in by the ice to the north of Icy Cape, Alaska, I have to express it as my decided opinion that unless such relief had been offered fully nine-tenths of the shipwrecked seamen must have perished during the approaching winter. I can not understand how any American shipmaster could have failed to go at once to the relief of his shipwrecked countrymen; nor, on the other hand, can I understand how any representative of the American people could refrain from voting a reasonable compensation for so great service rendered to humanity and to the United States. Men situated as were these whalers are particularly and especially of the people, and particularly of that class which has contributed substantially to the prosperity of their country by wresting from nature stores of animal treasure, which have added within the history of the country hundreds of millions to the country's accumulated wealth. A wise regard for the future, whether from the standpoint of materialism or humanitarianism, seems to require a proper consideration of the moral claim the owners of these vessels have upon the United States.

Very truly, yours,

A. W. GREELY.

Mr. SAMUEL OSBORN, Jr.,

1012 Fourteenth Street, Washington, D. C.

Again, by act of Congress approved January 3, A. D. 1887, our Government provided for the relief of the survivors of the exploring steamer *Jeannette*, and the widows and children of those who perished in the retreat from the wreck of that vessel in the arctic seas. Said act is as follows:

[PRIVATE—No. 6.]

AN ACT for the relief of the survivors of the exploring steamer *Jeannette*, and the widows and children of those who perished in the retreat from the wreck of that vessel in the arctic seas.

Whereas the steamer *Jeannette*, while engaged in an exploring expedition by authority of Congress and under the direction of the Secretary of the Navy, was wrecked in the arctic seas on the thirteenth day of June, eighteen hundred and eighty-one, and in consequence thereof the lives of many of her officers and crew were lost: and

Whereas a court of inquiry appointed in pursuance of a joint resolution of Congress to investigate the circumstances attending the loss of the said steamer *Jeannette*, and the general conduct and merits of all of the officers and enlisted men of the expedition, reported, after a thorough investigation, that while every officer and man so conducted himself that there was no occasion to impute censure to any member of the expedition, the constancy and endurance with which they met the hardships and dangers that beset them entitle them to great praise: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That to reimburse the survivors of the officers and

crew of the said steamer *Jeannette* for losses incurred by them, respectively, in consequence of the wreck of that vessel, there shall be paid, out of any money in the Treasury not otherwise appropriated, the following sums, to wit: To George W. Melville, chief engineer, one thousand dollars; to John W. Danenhower, lieutenant, one thousand dollars; to Raymond L. Newcomb, naturalist and taxidermist, six hundred dollars; to John Cole, acting boatswain, six hundred dollars; to W. F. C. Nindemann, seaman, six hundred dollars; to James A. Bartlett, fireman, six hundred dollars, and to the remaining survivors of the crew of said vessel, namely, Louis P. Noros, Herbert W. Leach, Henry Wilson, Frank E. Manson, Charles Tong Sing, seamen, and John Lauterback, coal heaver, the sum of six hundred dollars each.

SEC. 2. That the twenty-third day of March, eighteen hundred and eighty-two, being the date of finding the remains of the commanding officer and others of the said expedition, shall be deemed and taken to be the date of the decease of the following-named officers and enlisted men of the expedition who lost their lives in the retreat from the wreck of the said steamer *Jeannette*, namely: Lieutenant-Commander George W. De Long; Lieutenant Charles W. Chipp; Passed Assistant Surgeon James M. Ambler; Jerome J. Collins, meteorologist; William Dunbar, ice pilot; Walter Lee, machinist; Henrich H. Kaack, Carl A. Gortz, Adolph Dressler, Hans H. Erichsen, Ah Sam, Alfred Sweetman, Henry D. Warren, Peter E. Johnson, Edward Star, and Albert G. Kuelme, seamen; Nelse Iverson, George W. Boyd, and Walter Sharvill, coal heavers, and Seaman Alexy.

SEC. 3. That the accounting officers of the Treasury be, and they are hereby, authorized and directed to allow to the widow of any deceased officer or enlisted man named in the second section of this act, or if there be no widow living, to the lawful child or children of such deceased, or if there be no widow or child living, to the surviving dependent parent or parents of such deceased, if any, a sum equal to twelve months' pay according to the rate of pay at which the name of such deceased was borne upon the pay rolls of the said steamer *Jeannette*: *Provided*, That the legal representatives of the deceased officers and enlisted men named in the second section of this act shall also be paid from the Treasury any arrears of pay due such deceased, the same to be computed up to and including the said twenty-third day of March, eighteen hundred and eighty-two: *Provided further*, That the relatives, in the order herein named, of Seaman Aniguin, one of the crew of the steamer *Jeannette*, and who, while connected with said expedition, died at Irkutsk, Siberia, January fifth, eighteen hundred and eighty-three, shall in like manner be entitled to receive twelve months' pay in addition to the amount due said deceased at the time of his death: *Provided further*, That the surviving child of Henry D. Warren, one of the crew of the *Jeannette*, shall in like manner be entitled to receive twelve months' pay, and also the amount found due said deceased Warren at the time of his death, and that no moneys shall be paid to the widow of said Warren under this act: *Provided further*, That in any case where heretofore a pension has been granted, or may hereafter in fact be granted, to any such widow, child, or dependent parent, by reason of the death of any of the persons named in the second section of this act, in the payment of such pension account shall be taken of any sum paid under this act, and to the extent of its amount said sum shall be in lieu and stead of such pension, and no further.

Approved, January 3, 1887.

In the Fiftieth Congress the Committee on Commerce in their report on the advisability of erecting refuge stations in the immediate vicinity of where the great disaster occurred, from which relief is asked by this bill, say:

"The wonderful record of Captain Healy, of the United States Revenue Marine, in rescuing and bringing back to the United States over 350 seamen, is a glorious tribute to the energy and indomitable courage of that officer and the efficiency of our Revenue-Marine Service. But human endeavor has its limits. When the sea is frozen over no power on earth can reach shipwrecked vessels to render assistance."

It was a glorious and wonderful work by the Government to save these 350 lives during six years of service by its war or revenue vessels, the officers of which, with all their crews, were employed, fitted, and paid for this precise service. But what shall we say of the officers and crews of these 5 whale ships who left New Bedford and Edgartown, and sailing 15,000 to 20,000 miles, by the way of Cape Horn, to the Arctic Ocean, in their various courses, as all sailing vessels must to leave ports in latitude 42° north, on the Atlantic Ocean, to reach the whaling grounds on the west in the latitude of the seventies north, in the Arctic?

The sacrifices of leaving homes and families, at great expense and discomfort, with no hope of reward except upon the whaling grounds in the capture of whales, reached after twelve months of sailing upon the oceans of the globe, the North

and South Atlantic oceans, as well as the South and North Pacific oceans; as San Francisco was not then known as a whaling port, as supplies adapted to their peculiar wants were not procurable there, yet having reached this point and finding plenty of whales, they are reached by a messenger from a whaleboat's crew with the imploring letter by Henry Pease, jr., and 31 of the shipmasters, beseeching their assistance for 1,200 men, the officers and crews of 32 American whale ships, inextricably hemmed in by ice, with nothing but starvation and death before them.

Yet in this acme or height of all their hopes and aims they abandon the legitimate object of their voyages to save these men from death, or worse—the rigors of a frozen zone, unprepared with sufficient clothing or food for the winter season, soon to overtake them.

Such acts of moral heroism are rarely, if ever, excelled in the annals of mankind. By these acts the officers and crews of these 5 whalers are deprived of their earnings for these past twelve months, as well as the twelve months to come, as another year must pass (making two years of toil) before they shall be able to reach their harvest field, amid surrounding ice and snow, for which they left their homes on the Atlantic coast. Nor is this all; many of these officers and men having families at home, are in need of earnings, which these unimproved opportunities would have afforded except for this humane work. Not only these but the families represented by the ownership of these 5 vessels are stinted, first or last, by this very course of benevolence, pursued by those in custody of their property. Yet while no complaint so far as we know has ever arisen from a single New England owner or his family, it remains true that the majority of those owners, because of the financial embarrassments that have long ago taken place on account of those two long years of delay in receiving the receipts of their hardy and legitimate business from these very whale ships, have been and are suffering to-day.

We feel assured that these 300 masters, officers, and crews of these 5 ships, as well as the families represented by the agents and owners of the same, should not be longer without relief from these losses by a generous, noble, honorable, and mighty nation, now rising with rapid strides to its zenith of glory and power to the admiration of all mankind.

The above precedents, as well as the well-understood temper of all Congresses in regard to the just and proper treatment of this class of petitioners for relief, seem to make the way generally very clear as to the duty of this committee. There are two points, however, in which the committee must act solely on their own judgment: First, as to the amount of money we should recommend to be paid to these petitioners as a just and proper sum under all the circumstances. It is clear that, had it been known that these 900 human beings were situated as there is overwhelming evidence that they were, a demand would have come up from the entire country that the Government fit out and send ample relief vessels in the briefest possible time, regardless of the expense to the nation.

It is also clear that had such information reached the authorities of the Government, no time would have been lost in directing the masters of these five whalers to forthwith abandon all the interests of their owners, their crews, and of themselves, for the rescue of these unfortunates; and that they should look to the Government for ample compensation for all losses and for reward. But there were no means of speedy communication at that date with those desolate regions.

And these five vessels simply did it without formal orders, and they acted on the principle that it was a duty to common humanity. The rescue of 900 human beings from those frozen regions was an act of unparalleled magnitude. No case of such magnitude appears or can be found in the history of any maritime nation on the globe. No such peril ever was known to exist in the Arctic or Antarctic Oceans, where 1,200 lives were in such imminent peril from the frozen regions. And the masters of these vessels showed a heroism worthy of recognition and commensurate reward. We are informed by the managing owner of one of these rescuing vessels that, of the parties rescued, there was a very large number of men who had served in the Union Army in the late rebellion, and a still larger number who had served in the United States Navy. The war had then lately closed and these men had turned their attention to this business of whaling for a livelihood. The fact that so many of these rescued men had so recently been of the nation's defenders certainly rather strengthens the claim of these petitioners, if, in any degree, the claim needed strengthening.

The other point in which the committee finds some difficulty is in the inconsistency that is made apparent in the amount prayed for in the bill. The bill calls for a uniform allowance for each vessel. It appears to the committee that such an award would be inequitable, inasmuch as the number of persons rescued, fed, and

cared for by the vessels, respectively, was entirely unequal. (See table showing the number rescued by each vessel heretofore stated.)

While a diversity of opinion has existed among the members of the committee as to the exact amount to be allowed for each of the vessels named, yet it is finally agreed to report favorable for the following amounts, viz. at the rate of \$138.89 for each person by them rescued, amounting as follows:

Name of vessel.	Number rescued.	At \$138.89 each equals—
Midas.....	143	\$19,861.27
Daniel Webster.....	155	21,527.95
Lagoda.....	170	23,611.30
Progress.....	188	26,111.32
Europa.....	244	33,889.16

Your committee therefore recommend that said bill be amended as follows: In lines 7 and 8 strike out the words "sixty thousand dollars" and in lieu thereof insert "\$19,861.27 to the owners of vessel *Midas*, \$21,527.95 to the owners of the vessel *Daniel Webster*, \$23,611.30 to the owners of the vessel *Lagoda*, \$26,111.32 to the owners of the vessel *Progress*, and \$33,889.16 to the owners of the vessel *Europa*;" and that when so amended said bill do pass.

[See p. 532.]

#### FIFTY-THIRD CONGRESS, SECOND SESSION.

February 28, 1894.

[Senate Report No. 231.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 286) for the relief of the owners and crew of the Hawaiian bark *Arctic*, having had the same under consideration, respectfully report:

A bill made by amendments of this committee, identical in terms with that herein considered, was reported favorably by this committee at the first session of the Fifty-second Congress, and the same measure had theretofore, at the same session, been favorably reported by the Committee on Claims of the House of Representatives.

The facts underlying the bill being of long standing and unquestioned, the committee renew the considerations which justified the favorable report of this committee at the last Congress, and call attention to the affirmation by Congress of the principle and justice involved in the passage of a bill (H. R. 10267, Fifty-first Congress, second session) for the relief of the owners and crews of the American whaling vessels *Midas*, *Progress*, *Lagoda*, *Daniel Webster*, and *Europa*, which was identically the same as to questions of fact and service as those on which this bill for the relief of the *Arctic* is based, which bill passed Congress at such second session, and was approved February 21, 1891.

The committee repeats that the unselfish humanity of the officers and crews of these American whalers in foregoing the objects and profits of their whaling voyages that they might rescue more than a thousand souls from the perils of cold, hunger, and death involved in their icebound imprisonment within the whaling grounds of the Arctic Circle, successfully appealed to the justice and generosity of the nation; and the same justice and generosity is due to the owners and crew of the *Arctic*, of foreign registry, who made equal sacrifices and showed equal alacrity in following the instincts of humanity which is not

bounded by nationality or race. The committee does not deem it necessary to recapitulate the circumstances attending the rescue of the officers and crews of more than 30 vessels embargoed in Arctic ice, which more than twenty years ago sent a thrill of relief through the hearts of the civilized world, but which for twenty years remained without national recompense or recognition. The tardy justice awarded by the Fifty-first Congress to the owners and crews of the rescuing vessels of American registry is still withheld from the Hawaiian ship which heartily united with ours in this memorable rescue. The bill under consideration repairs the wrong of this long delay.

The committee append a report made on the bill of the Fifty-first Congress, second session (which afforded relief to the American whalers), and adopt the report (No. 918) from the Committee on Claims, House of Representatives, Fifty-second Congress, first session, in favor of a bill of the same purport with that under consideration, and append a letter addressed by Messrs. Charles Brewer & Co., managing owners of the *Arctic*, to the Hon. Henry L. Dawes, late of the Senate, explanatory of the reasons why the *Arctic* was not included in the bill for the relief of the American whalers, which, as before stated, became a law on the 21st of February, 1891.

The committee report the bill favorably and recommend its passage.

[For reports House and Senate Committees on Claims see Senate Report 577, Fifty-second Congress, first session, pp. 533 *et seq.*]

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## FIFTY-FOURTH CONGRESS, FIRST SESSION.

March 25, 1896.

[Senate Report No. 571.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 2117) for the relief of Mrs. George Pauls, having had the same under consideration, respectfully report:

The husband of the person named in this act lost his life in May, 1886, under the following circumstances:

The German bark *Edward Pens* was lying at a wharf in the harbor of Wilmington, N. C. At the next berth above lay the United States revenue cutter *Colfax*, with her bow upstream. Although the cutter was not under steam, an attempt was being made to move her out of her place into the stream, in order that another vessel might take her berth. In order to do this, a line had been run from the *Colfax's* bow to a kedge in midstream and, for additional safety, a line sent across the river by a boat to hold on by.

Through some error the cutter's head was cast off from the wharf before the line sent across the stream had been made fast. The current swung the *Colfax's* bow around until she was broadside to the stream, and in this position, being exposed to the full force of a swift current, the line to the kedge was not strong enough to hold her, and upon breaking the *Colfax* fouled the German bark *Edward Pens*. The rigging of the two vessels having become entangled, George Pauls, mate of the *Edward Pens*, went out upon the cathead to clear it away. While there one of the lanyards, either cut by one of the cutter's crew

or parting through the strain, Pauls was struck upon the back of the head, knocked into the water, and drowned.

The mate at the time he was struck was in the performance of his duty, acting as any zealous officer would do under the circumstances, and does not appear to have been guilty of any contributory negligence.

The appropriation proposed in this bill is recommended by the Secretary of State; was also recommended by Secretary Blaine and President Harrison in 1890, as will be seen by their communications annexed to this report. In that of Secretary Blaine the evidence is carefully and elaborately presented.

The committee recommend the passage of the bill.

DEPARTMENT OF STATE,

*Washington, February 14, 1896.*

SIR: I have the honor to transmit to you for your information and consideration a copy of a note, dated the 6th instant, from the ambassador of Germany at this capital, recalling attention to the claim of the widow of George Pauls for compensation for the death of her husband, alleged to have been caused by carelessness in working the United States revenue cutter *Colfax*, in the harbor of Wilmington, N. C., on the 8th day of May, 1886.

For your further information I respectfully refer you to Senate Ex. Doc. No. 23, first session Fifty-first Congress, and to Report No. 1690 of the House of Representatives, first session Fifty-first Congress.

In view of the facts of this case, the Department earnestly renews its previous recommendations that an appropriation of \$5,000 be made for the benefit of Mrs. George Pauls.

I have the honor to be, sir, your obedient servant,

RICHARD OLNEY.

Hon. JOHN SHERMAN,

*Chairman Committee on Foreign Relations, United States Senate.*

*To the Senate and House of Representatives:*

I herewith inclose a report from the Secretary of State, with accompanying papers, in relation to the death of George Pauls, a German subject, at Wilmington, N. C., May 8, 1886, and the claim of his widow for compensation on that account. In view of the statements made by the Secretary of State I earnestly recommend that an appropriation of \$5,000 be made in behalf of Mrs. Pauls.

BENJ. HARRISON.

EXECUTIVE MANSION,

*Washington, January 7, 1890.*

*To the PRESIDENT:*

Mr. von Alvensleben, the minister of Germany at this capital, in his note of January 24, 1888, presented the claim of Mrs. Pauls, asking compensation for the death of her husband, George Pauls, mate of the German bark *Edward Pens*, alleged to have been caused by carelessness in working the revenue cutter *Colfax* in the harbor of Wilmington, N. C., May 8, 1886.

On the 11th of February, 1888, a copy of Mr. von Alvensleben's note was transmitted to the Secretary of the Treasury for the consideration of the Treasury Department, and on March 22, 1888, reply was made, accompanied by drawings and statements, tending to show that Mate Pauls's death was due to his own carelessness and neglect.

This reply was not regarded by the Department as conclusive. Accordingly, on April 11, 1888, a further communication was made to the Secretary of the Treasury and as thus presented the views of the Treasury Department requested. After briefly referring to the subject, the Department's letter of April 11, 1888, to the Secretary of the Treasury, proceeded as follows:

"A careful examination of the several affidavits and statements of witnesses of the occurrence, which accompany your said letter for my information, has been made, with the following results:

"1. The German bark *Edward Pens* was occupying a proper berth at the wharf, and therefore not responsible for any collision.

"2. The revenue cutter *Colfax* was lying at the wharf, with her head upstream. Astern of her in the next berth was the bark (Nogard's statement), also with her head upstream. The cutter was not under steam (Kristofferson's statement), but an attempt was being made to move her out of her berth into the stream by means of lines, in order that another vessel might take her place. There was a strong ebb tide at the time (Foley's and Kristofferson's statements), of which the officer of the cutter was previously aware and which he was bound to take into account in his maneuvers.

"3. In performing this movement the cutter's head swung round so that she came into collision with the bark.

"The manner in which the maneuver resulting in the collision was executed, as appears from the statement of Boatswain Dill and Master-at-arms Kristofferson, was as follows: Dill says: 'Lieutenant Herring was in charge of the deck. We had a kedje out in the stream, which had been planted there when we first laid up to overhaul and paint the ship, the purpose of it being for convenience in hauling out into the stream in case of fire, etc. When the order was given, I cast off the headlines to the shore and hauled out the warp attached to the kedje. The warp was a wire rope. The stern lines were kept fast. As soon as the tide caught on our starboard bow the vessel's head swung out into the stream and she was thus broadside to the current. In this position the kedje could not hold her, and the bow swung entirely around until it pointed downstream and we fouled the German bark.'

"Kristofferson's statement indicates that Lieutenant Herring had foreseen that the kedje would not hold the cutter's bow, and had taken precaution to send another line across the river to hold on by, but through some mistake the order was given to let go the bowline before the line sent across the river was made fast.

"Kristofferson's statement says: 'Lieutenant Herring was in charge and had run a line with a boat across the river to haul out by, but through some misunderstanding between him and the boatswain, who was on the forecastle, the starboard bowline holding us to the wharf was let go before the line sent across the river could be made fast, the order to let go being given by Lieutenant Herring, who supposed that the line across the river was fast. The tide being ebb and very swift, before the starboard lines could be made fast again the ship's bow swung off into the stream, and the next thing we knew we were swinging completely round, and we fetched up alongside the German bark. We had a kedje out in midstream, but that failed to hold us.'

"4. There being no proper fasts to secure the cutter, her head was carried downstream and she came into collision with the German bark, the chain span connecting the davits on the cutter's port quarter resting against the bark's port cathead and outrigger or spritsail yard. (Foley's, Harrison's, Morek's, and Nogard's statements.)

"5. To clear the rigging the German mate went out on the cathead and the accident took place which resulted in his drowning, which is thus described by the deponents:

"Lieutenant Foley says: 'Very soon afterwards the lanyard of the forward davit guy was cut by some member of our crew, and this relieving the strain on the guys and outrigger, the man Pauls fell overboard. I was looking directly at him at the time, but saw nothing strike him.'

"Harrison says: 'I did not see anything strike him, but something, I do not know what, appears to have given away at that time.'

"Morek says: 'Lieutenant Herring gave order to cast off lanyard at the forward davit guy. One of the men, Carl Miller, was obeying the order, and he had two turns of the lanyard unrove when the remaining parts suddenly broke. This released the davit, and as it swung aft it struck the German mate at the back of the head and knocked him overboard.'

"Nogard says: 'The mate of the bark at once stepped out on the cathead, apparently endeavoring to clear the chain span. At about this time someone. I am not sure who, gave an order to swing our davits inboard. Our men were about to obey this order when suddenly the lanyard of the guy forward of the forward davit parted or was cut adrift and struck the man, and he fell or was knocked overboard. I can not tell for certain whether the guy was cut or whether it broke. I simply saw it give way.'

"Kristofferson says: 'I saw the mate on the forecastle, and also saw him step out on the cathead as though to clear some of the fouled rigging. I happened to turn away at that moment to obey some order, when I heard a sudden splash, and looking over the rail I saw the mate disappear under the water. I do not know whether anything struck him, but do know that the lanyard of the forward davit guy was either let go or broken.'

"I heard someone give the order to cut the lanyard of the davit guy, but do not know who gave that order or whether it was cut. I know it parted in some way, but whether by cutting or not I can not say."

"It appears from the above that Lieutenant Herring gave an order to cast off the lanyard; that the order was partly obeyed, and that the sudden casting off caused the lanyard to part and release the davit guy and the davit; that one or the other struck the mate (according to Morek it was the davit; according to Norgard, the lanyard or the guy) and knocked him overboard, and that he was drowned.

"The mate never came to the surface. It is not absolutely certain from this that he was stunned by the blow; he may have struck the bark's anchor, as Kristofferson suggests, or he may have got under the ship's bottom. Nevertheless, it seems clear that his fall and subsequent death were caused by the blow.

"6. As to the suggestion made by Norgard that the mate had no business on the cathead and was very foolish to go there, it can only be said that though the position was a dangerous one, the mate's act was nevertheless what any officer zealous in the performance of his duty would probably have done.

"From the above it appears that the cutter *Golfar* fouled the German bark through the neglect of proper precautions in moving out from her berth; that the mate of the bark, in an endeavor to free the vessels, went out on the cathead of the bark; that while there he was knocked overboard by a blow caused by the giving way of the lanyard of the cutter's davit guy.

"From the foregoing analysis of the evidence and the consideration set forth, I am strongly disposed to the opinion that the death of the German mate George Pauls was a direct consequence of negligence on the part of officers of the United States, and that it is reasonable that this Government, as a gracious and equitable act, should make suitable reparation to his family.

"Your letter expresses no conclusion in the case, and I should therefore be pleased to have your views in regard thereto; and should you concur in my opinion, I beg to be advised whether such reparation may be tendered directly by the Treasury Department, and to what amount, or whether it will be necessary to apply to Congress for an appropriation adequate for the relief of the suffering family of a worthy seaman who lost his life under the circumstances described while in the discharge of his duty.

"In the latter alternative I should be pleased to be enabled to inform the German minister that the necessary application has been made to Congress."

With this letter the matter appears to have rested until February 25, 1889, when, in view of an oral inquiry from the German minister, a further communication was addressed to the Secretary of the Treasury calling his attention to the unanswered letter from this Department of April 11, 1888.

The acting Secretary of the Treasury replied, under date of March 11, 1889, saying "that there is no law which renders the Government liable for a payment of claims of this character, and that no relief can be granted in such cases, except when authorized by some act of Congress, and only where there is an available appropriation for that purpose."

In October last Mr. von Mumm, the *chargé d'affaires ad interim* of Germany, personally visited the Department to ascertain whether the claim of Mrs. Pauls could not be brought to the attention of Congress, and on the 19th of that month I addressed a letter to the Secretary of the Treasury, requesting him to review the whole case and to inform me whether, in view of the fact that it was here regarded as one for the consideration of Congress, the Treasury Department would make the necessary recommendation at the approaching session.

The Secretary of the Treasury, under date of November 6, 1889, declined to make the recommendation requested.

Since then the Department has received a note from the German *chargé d'affaires ad interim* here, of the 10th November, calling attention to the claim and asking to be advised of the decision reached therein.

The views contained in the Department's letter of April 11, 1888, to the Secretary of the Treasury remain unmodified by any later facts to the contrary, and it is of opinion, from the evidence and facts before it, that the death of George Pauls is chargeable to the neglect of proper precautions by certain officers of the United States, and that as a gracious and equitable act on the part of this Government his family should be tendered suitable reparation. Inasmuch, however, as there is no available fund from which payment can be made to Mrs. Pauls, I desire to herewith submit for your consideration the propriety of a recommendation to Congress that it appropriate the sum of \$5,000, to be paid to her on that account.

Respectfully submitted.

JAMES G. BLAINE.

DEPARTMENT OF STATE,  
Washington, January 6, 1890.

[See pp. 528, 563, 569.]

May 27, 1896.

[Senate Report No. 1074.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 692) for the relief of the legal representatives of James and William Crooks, of Canada, have considered the same and report as follows:

Bills identical in purport to the one under consideration have been favorably reported on by committees of both Houses of Congress at different sessions, and have been the subject of Executive recommendation. Among these reports the committee adopts and makes a part of this report that of the House Committee on Foreign Affairs, made at the first session of the Fiftieth Congress, and numbered 2861, wherein the facts and conclusions are clearly and justly stated.

The committee therefore recommend the passage of said bill with an amendment, striking out in line 10 thereof the words "with interest on said sum from the day of seizure."

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[House Report No. 2861, Fiftieth Congress, first session.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 3879) for the relief of James and William Crooks, of Canada, have considered the same and report as follows:

In the year 1812 the above-named James Crooks and his brother William, British subjects, were the joint owners of a schooner, the *Lord Nelson*. The now applicants are the legal representatives of James Crooks and William Crooks.

The *Lord Nelson* was seized while plying her ordinary trade on Lake Ontario on the 5th of June, 1812, by the brig *Oneida*, commanded by Lieutenant Woolsey, of the United States Navy, nearly two weeks before the declaration of war; was carried by him into Sacketts Harbor, in the State of New York, and on the 26th of August, at the suit of the United States Government, was libeled in the district court of the United States of America for the district of New York, and afterwards a decree was made ordering the vessel to be sold and the proceeds to be brought into court, to abide the event of a suit.

The vessel was bought by Lieutenant Woolsey for the United States, taken into their service, armed, and used against Great Britain in the war.

The price paid for the vessel was \$2,999.25, a price which was below her value, as was shown by subsequent investigation. The price paid for the cargo was \$1,972.10.

These amounts were paid into the hands of Theron Rudd, the clerk of the court above mentioned.

In 1815, when peace was restored, Mr. Crooks applied to the American Government for redress.

The Government of the United States neglected to bring the libel to trial until the 11th of July, 1817, more than five years after the seizure, when a decree was made by the court of the northern district of New York pronouncing the seizure illegal, and directing the proceeds of the sale to be paid to Mr. Crooks.

In the meantime Theron Rudd, the clerk of the court, had, viz. on the 17th of May, 1817, absconded with all the funds of the court, and no part thereof was paid to the owners of the *Lord Nelson*.

On the 3d of February, 1819, President Monroe sent a message to Congress on the subject, stating that—

"These injuries have been sustained under circumstances which appear to commend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

On the 11th of February, 1819, Mr. Goldsborough, of the Committee on Claims of the Senate, reported a bill for the relief of Messrs. Crooks, which was twice read by unanimous consent. On being brought up in Committee of the Whole it

was referred to the Committee on Finance and engrafted on the general appropriation bill for the support of the Government. The bill so amended was returned to the House of Representatives, but the House refused to accede to the amendment because the circumstances had not been investigated by a committee of the House.

From this period until the year 1831 there were numerous communications between the Governments on the subject.

The claim was again presented to the House of Representatives on the 29th of May, 1834, and by the order of the House referred to the Committee on Foreign Affairs. No report was made by that committee.

In 1836 the claim was submitted to the Committee on Claims of the House, who reported (H. R., Twenty-fourth Congress, first session, Report 814, on the 24th of June, 1836), after a review of the facts:

"The committee entertain the opinion that the petitioners are entitled to relief. This Government has at all times maintained that foreign Governments are liable for losses sustained by our citizens by illegal captures.

"There is no pretense in this case that the capture was legal. The decree of the court put that question to rest."

And the committee—

"Resolved, That the petition and papers of James Crooks and William Crooks be referred to the Secretary of the Navy, to ascertain (on giving notice to the said James and William Crooks, or to their agent, of the time and place of taking testimony) the value of the vessel called the *Lord Nelson*, captured by Lieutenant Woolsey on Lake Ontario on the 5th June, 1812, at the time of the said capture, and the cargo then on board of said vessel, and that he report the same at the next session of Congress."

The investigation took place, and on the 11th of February, 1837, the Secretary of the Navy reported—

"That from a careful examination of the evidence contained in these papers I am of the opinion that the value of the *Lord Nelson* at the time of her capture may be estimated at \$5,000, and the value of her cargo \$2,943.76; total value of the vessel and cargo, \$7,943.76."

On February 22, 1837, the Committee on Claims made the following report:

The Committee on Claims, to whom was referred the petition and papers of William Crooks and James Crooks, report:

That this case was examined at the last session of Congress, and a report was made thereon on the 24th of June, 1836, to which this committee refer and make the same a part of this report.

The House, on the recommendation of the committee, referred the subjects contained in the petition to the Secretary of the Navy to report, first, as to the value of the vessel when she was captured, on the 5th of June, 1812; and, secondly, the value of her cargo at that period.

The Secretary appointed a commissioner at Buffalo to take testimony, and instructed Mr. Barker to attend and put interrogatories. The rights of the United States have been amply guarded.

The Secretary reports the value of the vessel at the time of her capture was \$5,000, and that the value of her cargo was \$2,943.76. It does not appear from the petition to whom the cargo belonged, but its value was claimed by the petitioners.

The committee find, from the testimony recently taken, that the cargo did not belong to them. They, therefore, in the bill herewith reported, do not make any provision for paying for the cargo, but leave that subject to be investigated when the owners shall apply for relief; and they wish to be distinctly understood they do not make any decision as to the liability of the United States to pay for the cargo. It appears many of the articles were returned to the owners and accepted by them. They complain that the articles were not all of them returned, and that those they did receive were in a damaged state. All of these subjects, however, will be left to be decided if the owners of the cargo shall present their claims.

The committee concur with the Secretary of the Navy in the estimated value of said vessel.

The case of Cyrenus Hall was a seizure on Sandusky Bay. Mr. Hall was a citizen of Canada. He was relieved by an act approved on the 2d of March, 1833. He was allowed interest from the time his vessel was seized until the decree dismissing the libel was rendered.

From that time until the presentation of the claim interest was refused.

Interest was allowed from the time the claim was presented until the money was paid.

In that case the plaintiff suffered many years to elapse before he presented his claim. In the present case application was made for remuneration to the constituted authorities before the decree of acquittal was rendered. The suit was per-

mitted to be continued term after term against the remonstrances of the petitioner. In allowing interest in this case the committee do not design to establish a new principle, nor do they intend to set a precedent that will be applicable to the claims of American citizens. They allow interest from State policy, as our citizens have claimed it where their property has been unlawfully seized by the subjects of a foreign power, and they will undoubtedly claim it hereafter should their property be illegally seized.

The United States should demand nothing of a foreign Government that they are not willing to concede under a change of circumstances.

In this case a majority of the committee think and direct the chairman to report that interest be allowed from the time of the capture until the passage of the act appropriating the money. They consider the seizure was without any semblance of justification, and that inasmuch as the petitioners had pressed their claim from the time of the seizure to February, 1819, either before the courts on the libel or to the executors through the British legation, and inasmuch as the Executive and the Senate recognized the validity of the claim in 1819, and the House of Representatives did not decide against it, that it was obligatory on the Government of the United States to have resumed the consideration of the subject without further application by the British Government; that, in fact, the claim was one of a national concern, and should have been so treated by the United States.

On the 14th of December, 1837, a bill was reported to the House providing for the payment of the claim, with interest from the day of the seizure until the approval of the relief act by the President, which was read twice and committed to the Committee of the Whole House for the next day. This bill passed the House of Representatives but failed to pass the Senate.

In the year 1848 Mr. Crooks again presented a petition to the House, and the committee to whom it was referred reported adversely on the ground that the petitioners had consented to the decree for sale, and so could make no claim for the amount lost by the defalcation of the clerk.

In February, 1850, the State Department recommended the Committee of Ways and Means of the House to include in the civil and diplomatic appropriation bill \$5,000, and full legal interest on the same from the date of her capture.

Mr. Clayton's letter on the subject is as follows:

FEBRUARY 14, 1850.

SIR: The attention of this Department has been called to the claim of William Crooks and James Crooks, British subjects, against the United States for the capture of a vessel called the *Lord Nelson* by Lieutenant Woolsey, on Lake Ontario, in the year 1812. An examination of the subject has led this Department to the conclusion that the claim is meritorious, and adopting the language of the special message to Congress in 1819 in regard to it, I feel satisfied that "these injuries have been sustained under circumstances which appear to recommend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

I respectfully recommend, therefore, that an appropriation be included in the civil and diplomatic appropriation bill for the value of the vessel, namely, \$5,000 and the full legal interest on the same from the 5th of June, 1812, the date of her capture.

I am, sir, very respectfully, your obedient servant,

JOHN M. CLAYTON.

On the 3d of March, 1851, the Committee on Foreign Affairs of the House reported adversely to the claim without assigning any reason.

Mr. Crooks then brought the case before the Court of Claims, and judgment was delivered on the 28th of November, 1859, the court being divided in opinion. The opinion delivered by Judge Loring awarded to the claimant \$183.50, which amount was arrived at as being the proportion to which the claimants were entitled out of the sum recovered by the United States Government from Rudd, the embezzling clerk.

This judgment goes on the theory that the court had no jurisdiction to treat the claimants other than if they were American citizens. Their equities were admitted, but the court held it could not go outside statute law to grant relief.

Scarburgh, J.'s, opinion was that the claimant was entitled to the full value of the vessel, namely, \$5,000, and interest from the date of capture.

This report of the Court of Claims was submitted to Congress (report Court of Claims, first session Thirty-sixth Congress, Report No. 240), but no action was taken.

In March, 1860, the Hon. Mr. James Crooks, the survivor of the original claimants, died. Since 1860 no application has been made to Congress. The petitioners allege that it was thought it would have been useless to ask for attention to this claim

during the excitement consequent upon the civil war of the United States, and that the son of the Hon. James Crooks, in whose hands the papers were placed, became insane, and it was impossible to obtain from him an explanation of the nonprosecution of the claim for the last few years. The present petitioners allege they have lost no time since they have been in a position to urge the claim.

On the 1st of April, 1886, the claim was again commended to the favorable consideration of Congress by the message of the President referred to this committee (Ex. Doc. No. 161, Forty-ninth Congress, first session).

The Secretary of State's report refers to Mr. Clayton's recommendation that has been set forth in full above, and states that a careful reexamination of the subject has led the Department of State to the conclusion that the claim is a meritorious one, and that the injuries complained of were sustained under circumstances which appear to recommend strongly to Congress the claim to indemnity for the losses occasioned by them. The report further submits that the long period which has elapsed since the claim originated should not prejudice its careful consideration.

The committee, after careful consideration of the facts, concur in the recommendation of the State Department.

There is no room for doubt that the vessel was illegally seized, taken possession of by and used for the purposes of the United States Government, and that the owners, who are represented by the present claimants, have never received any pay for the vessel. The claim was persistently pressed during the lifetime of the original owner, and has at different times received the approval of the Executive, the Senate, and the House of Representatives. The fact of the decree for the sale of the vessel showing on its face that it was made by consent, has raised the question whether the claimants did not thereby assume the risk of the payment of the money into court. We do not think any weight should be attached to this contention. The consent, if given at all, must have been given by an agent, as, war having been declared, it was impossible for the owner to have been present, and such consent was probably given as the best that could be done under the circumstances to save the absolute forfeiture of the vessel. The fact remains that the claimants have received an injury by the wrongful act of an officer of the United States Navy, of which act the United States Government took advantage, and compensation for which has never been made to the claimants.

The committee think that a liberal and not a technical view should be taken of the matter, and that the same reparation which would be exacted by the United States for a similar wrong to one of its citizens ought to be frankly rendered by Congress in this case. Moreover, it is doubtful whether the claimants could in any way be affected by the default of the clerk of the district court of New York. The wrong complained of is the illegal capture of the vessel, and the subsequent proceedings are referred to merely as evidence that the seizure was illegal.

The adjudication on the case in the Court of Claims did not touch its merits. Judge Loring, who delivered the judgment of the court, took the ground that if the United States Government was liable it was to the nation of the individual injured and not to the individual, and so the matter should be arranged by treaty. Judge Scarburgh, the dissenting judge, stated that, while the claim properly pertained to the treaty-making Department of the Government, under the circumstances of having been recommended by the President, and so recognized by the Government, it should be allowed, and that by the principles of international law the petitioner was entitled to relief.

The committee think that the fact of the petitioners having appealed directly to the United States Government for relief instead of through the British Government should not be a bar of their obtaining redress.

The committee concur in the report of the Committee on Claims presented to the House on February 22, 1837, second session Twenty-fourth Congress, Report No. 243, and recommend that interest should be allowed.

It appears that the original claimants, James and William Crooks, were equal owners of the *Lord Nelson*, and that each has left descendants. The committee has therefore deemed it advisable that the payments should be made from the Treasury directly to the representatives of each.

The claimants have asked that they should be compensated for the large expense they have been put to for the prosecution of this claim for so many years, and also that allowance should be made because the value of money was greater when the claim arose than it is at present. The committee do not recommend any allowance to be made on these accounts.

Thus far your committee has followed and largely adopted the report made by the Hon. John W. Daniel on behalf of this committee in the second session of the Forty-ninth Congress, being Report No. 3743. But it is proper to state further, that in the investigation of the claim our attention was attracted to an adverse

report made in the case by a committee of the Twenty-sixth Congress charged with its examination. That the whole case might, if possible, be cleared from doubt or any misapprehension, a letter of inquiry was addressed to the honorable Secretary of State.

A copy of this letter, together with the Secretary's reply, and a copy of the dispatch from Mr. Rush, referred to therein, are given below:

In re James and William Crooks, claimants, for indemnity for loss of the *Lord Nelson*.

HOUSE OF REPRESENTATIVES,  
Washington, D. C., April 4, 1888.

SIR: As chairman of the subcommittee (Foreign Affairs) I respectfully ask for the following information: In Senate documents, first session Twenty-sixth Congress, 1839-40, volume 6, page 430, it appears that the committee charged with the consideration of the above-stated claim made an adverse report, upon the ground that the British Government were not favorably disposed to award indemnity to the owners of the *Lydia*, an American vessel seized by a British cruiser in the Bermudas under circumstances similar to the seizure of the *Lord Nelson*.

What I desire to know is, if the State Department shows what relief, if any, has been granted to the owners of the *Lydia*, and what is the present condition of said claim.

I have the honor to be, very respectfully, your obedient servant,

J. S. COTHRAN,  
Chairman Subcommittee.

Hon. THOMAS F. BAYARD,  
Secretary of State.

DEPARTMENT OF STATE,  
Washington, April 26, 1888.

SIR: In reply to your letter of the 4th instant, asking what relief, if any, has been granted to the owners of the *Lydia*, and what is the present status of said claim, I have the honor to inform you that a thorough search in the files of this Department fails to show any paper on the subject except the dispatch from Mr. Rush of the 29th of September, 1819, alluded to on page 4 of H. R. Ex. Doc. 161, Forty-ninth Congress, first session, nor does it appear that any claim for relief has ever been presented to this Department by the owners of the *Lydia*.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD,

JAMES S. COTHRAN,  
House of Representatives.

[Received November 25. Duplicate No. 93.]

LONDON, September 29, 1819.

SIR: On the 23d instant I received a representation from Messieurs W. and E. Lawrence, of this city, respecting the case of the ship *Lydia*, of New York, an American vessel belonging to Stephen Hathaway, George Hathaway, and Isaac Waite, citizens of the United States. The vessel was captured by the British during the late war, and condemned in the court of vice-admiralty at Bermuda. The sentence was reversed in London, and restitution ordered to the claimants. The ship being sold at Bermuda, the proceeds were paid into court to abide the result of the appeal; but since the reversal of the sentence it appears that through the default of the proper officers of the court in that island the proceeds are not now forthcoming, and the owners are likely to sustain a total loss unless this Government will interpose and protect them against the misconduct or other inability of its own officers. It is to procure this interposition that my official aid is invoked by Messieurs Lawrence, who are the agents of the owners. I do not think it necessary to trouble the Department with a copy of the correspondence that has passed between us. It will be sufficient for the present to state that, perceiving that the ship when captured was sailing under the protection of a British license, I have declined interfering. She was proceeding in ballast from New York to Charleston, thence to carry a cargo of provisions to Cadiz. The license which she had on board would have rendered her prize of war had she fallen into the hands of a cruiser of our country. I have deemed it proper to state thus much of the case, to anticipate whatever representations may be made by the parties themselves. I have said to them that if I have misjudged the merits of their applica-

tion in withholding my assistance an appeal to the Department of State will be open to them.

Count Palmella has lately got back again to this place from Paris. I learn from him that affairs between Portugal and Spain still remain wholly unsettled. The Count proceeds to Rio Janeiro before long to take upon himself the office of foreign affairs.

I inclose the Times of the 4th of the present month. It contains a publication purporting to exhibit the proceedings of the general assembly of Nova Scotia in the month of March on the subject of the convention concluded with this Government last autumn. I have no other knowledge of the existence of these proceedings than is afforded by this newspaper publication, and would incline to hope from the nature of some of the sentiments and language toward the United States that it must be spurious.

I have the honor, etc.,

RICHARD RUSH.

Hon. JOHN QUINCY ADAMS,  
*Secretary of State.*

[See pp. 528, 558, 569.]

# FIFTY-FIFTH CONGRESS, THIRD SESSION.

March 1, 1899.

[Senate Report No. 1874.]

Mr. Daniel, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having had under consideration Senate bill 2650, for the relief of James and William Crooks, of Canada, respectfully report the same with the recommendation that it do pass.

This is an old but just and well-authenticated claim. Its settlement was recommended in 1819 by President Monroe—now eighty years ago. It has been often examined and reported favorably by committees of the House of Representatives and the Senate, and there is no reason why it should not be paid. In the Fifty-fourth Congress it was reported favorably by Mr. Davis from this committee, but it was recommended in the report that interest be stricken out. This bill carries 4 per cent interest, and we are informed by the attorney of the claimants that this will be satisfactory.

We are of opinion that interest at this rate should be paid, as we are dealing with the citizens of a foreign government and should do as to them as we claim for our own citizens in similar cases. This will not affect the claims of our own citizens against this Government nor constitute a precedent against the custom not to pay interest on claims in such cases.

The committee adopt and make a part of this report the report of the Committee on Foreign Affairs of the House of Representatives made during the first session of the Fiftieth Congress, No. 2861, and refer to it for the facts and reasons that justify their conclusions.

[Senate Report No. 1074, Fifty fourth Congress, first session.]

The Committee on Foreign Relations, to whom was referred the bill (S. 692) for the relief of the legal representatives of James and William Crooks, of Canada, have considered the same and report as follows:

Bills identical in purport to the one under consideration have been favorably reported on by committees of both Houses of Congress at different sessions, and

have been the subject of Executive recommendation. Among these reports the committee adopt and make a part of this report that of the House Committee on Foreign Affairs, made at the first session of the Fiftieth Congress, and numbered 2861, wherein the facts and conclusions are clearly and justly stated.

The committee therefore recommend the passage of said bill with an amendment, striking out in line 10 thereof the words "with interest on said sum from the day of seizure."

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[House Report No. 2861, Fiftieth Congress, first session.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 3879) for the relief of James and William Crooks, of Canada, have considered the same and report as follows:

In the year 1812 the above-named James Crooks and his brother, William, British subjects, were the joint owners of a schooner, the *Lord Nelson*. The now applicants are the legal representatives of James Crooks and William Crooks.

The *Lord Nelson* was seized while plying her ordinary trade on Lake Ontario on the 5th of June, 1812, by the brig *Oneida*, commanded by Lieutenant Woolsey, of the United States Navy, nearly two weeks before the declaration of war; was carried by him into Sacketts Harbor, in the State of New York, and on the 26th of August, at the suit of the United States Government, was libeled in the district court of the United States of America for the district of New York, and afterwards a decree was made ordering the vessel to be sold and the proceeds to be brought into court, to abide the event of a suit.

The vessel was bought by Lieutenant Woolsey for the United States, taken into their service, armed, and used against Great Britain in the war.

The price paid for the vessel was \$2,999.25, a price which was below her value, as was shown by subsequent investigation. The price paid for the cargo was \$1,972.10.

These amounts were paid into the hands of Theron Rudd, the clerk of the court above mentioned.

In 1815, when peace was restored, Mr. Crooks applied to the American Government for redress.

The Government of the United States neglected to bring the libel to trial until the 11th of July, 1817, more than five years after the seizure, when a decree was made by the court of the northern district of New York pronouncing the seizure illegal, and directing the proceeds of the sale to be paid to Mr. Crooks.

In the meantime Theron Rudd, the clerk of the court, had, viz, on the 17th of May, 1817, absconded with all the funds of the court, and no part thereof was paid to the owners of the *Lord Nelson*.

On the 3d of February, 1819, President Monroe sent a message to Congress on the subject, stating that—

"These injuries have been sustained under circumstances which appear to commend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

On the 11th of February, 1819, Mr. Goldsborough, of the Committee on Claims of the Senate, reported a bill for the relief of Messrs. Crooks, which was twice read by unanimous consent. On being brought up in Committee of the Whole it was referred to the Committee on Finance and engrafted on the general appropriation bill for the support of the Government. The bill so amended was returned to the House of Representatives, but the House refused to accede to the amendment because the circumstances had not been investigated by a committee of the House.

From this period until the year 1831 there were numerous communications between the Governments on the subject.

The claim was again presented to the House of Representatives on the 29th of May, 1834, and by the order of the House referred to the Committee on Foreign Affairs. No report was made by that committee.

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"The committee entertain the opinion that the petitioners are entitled to relief. This Government has at all times maintained that foreign governments are liable for losses sustained by our citizens by illegal captures.

"There is no pretense in this case that the capture was legal. The decree of the court put that question to rest,"

And the committee—

“*Resolved*, That the petition and papers of James Crooks and William Crooks be referred to the Secretary of the Navy, to ascertain (on giving notice to the said James and William Crooks, or to their agent, of the time and place of taking testimony) the value of the vessel called the *Lord Nelson*, captured by Lieutenant Woolsey on Lake Ontario on the 5th of June, 1812, at the time of the said capture, and the cargo then on board of said vessel, and that he report the same at the next session of Congress.”

The investigation took place, and on the 11th of February, 1837, the Secretary of the Navy reported—

“That from a careful examination of the evidence contained in these papers I am of the opinion that the value of the *Lord Nelson* at the time of her capture may be estimated at \$5,000, and the value of her cargo \$2,943.76; total value of the vessel and cargo, \$7,943.76.”

On February 22, 1837, the Committee on Claims made the following report:

The Committee on Claims, to whom was referred the petition and papers of William Crooks and James Crooks, report:

That this case was examined at the last session of Congress, and a report was made thereon on the 24th of June, 1836, to which this committee refer and make the same a part of this report.

The House on the recommendation of the committee, referred the subjects contained in the petition to the Secretary of the Navy to report, first, as to the value of the vessel when she was captured on the 5th of June, 1812; and, secondly, the value of her cargo at that period.

The Secretary appointed a commissioner at Buffalo to take testimony, and instructed Mr. Barker to attend and put interrogatories. The rights of the United States have been amply guarded.

The Secretary reports the value of the vessel at the time of her capture was \$5,000, and that the value of her cargo was \$2,943.76. It does not appear from the petition to whom the cargo belonged, but its value was claimed by the petitioners.

The committee find, from the testimony recently taken, that the cargo did not belong to them. They therefore, in the bill herewith reported, do not make any provision for paying for the cargo, but leave that subject to be investigated when the owners shall apply for relief; and they wish to be distinctly understood they do not make any decision as to the liability of the United States to pay for the cargo. It appears many of the articles were returned to the owners and accepted by them. They complain that the articles were not all of them returned, and that those they did receive were in a damaged state. All of these subjects, however, will be left to be decided if the owners of the cargo shall present their claims.

The committee concur with the Secretary of the Navy in the estimated value of said vessel.

The case of Cyrenus Hall was a seizure on Sandusky Bay. Mr. Hall was a citizen of Canada. He was relieved by an act approved on the 2d of March, 1833. He was allowed interest from the time his vessel was seized until the decree dismissing the libel was rendered.

From that time until the presentation of the claim interest was refused.

Interest was allowed from the time the claim was presented until the money was paid.

In that case the plaintiff suffered many years to elapse before he presented his claim. In the present case application was made for remuneration to the constituted authorities before the decree of acquittal was rendered. The suit was permitted to be continued term after term, against the remonstrances of the petitioner. In allowing interest in this case the committee do not design to establish a new principle, nor do they intend to set a precedent that will be applicable to the claims of American citizens. They allow interest from State policy as our citizens have claimed it where their property has been unlawfully seized by the subjects of a foreign power, and they will undoubtedly claim it hereafter should their property be illegally seized.

The United States should demand nothing of a foreign government that they are not willing to concede under a change of circumstances.

In this case a majority of the committee think and direct the chairman to report that interest be allowed from the time of the capture until the passage of the act appropriating the money. They consider the seizure was without any semblance of justification, and that inasmuch as the petitioners had pressed their claim from the time of the seizure to February, 1840, either before the courts on the libel or to the executors through the British legation, and inasmuch as the Executive and the Senate recognized the validity of the claim in 1819, and the House of Representatives did not decide against it, that it was obligatory on the Government of the United States to have resumed the consideration of the subject without fur-

ther application by the British Government; that, in fact, the claim was one of a national concern and should have been so treated by the United States.

On the 14th of December, 1837, a bill was reported to the House providing for the payment of the claim, with interest from the day of the seizure until the approval of the relief act by the President, which was read twice and committed to the Committee of the Whole House for the next day. The bill passed the House of Representatives, but failed to pass the Senate.

In the year 1848 Mr. Crooks again presented a petition to the House, and the committee to whom it was referred reported adversely on the ground that the petitioners had consented to the decree for sale, and so could make no claim for the amount lost by the defalcation of the clerk.

In February, 1850, the State Department recommended the Committee on Ways and Means of the House to include in the civil and diplomatic appropriation bill \$5,000, and full legal interest on the same from the date of her capture.

Mr. Clayton's letter on the subject is as follows:

FEBRUARY 14, 1850.

SIR: The attention of this Department has been called to the claim of William Crooks and James Crooks, British subjects, against the United States, for the capture of a vessel called the *Lord Nelson*, by Lieutenant Woolsey, on Lake Ontario, in the year 1812. An examination of the subject has led this Department to the conclusion that the claim is meritorious, and, adopting the language of the special message to Congress in 1819 in regard to it, I feel satisfied that "these injuries have been sustained under circumstances which appear to recommend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

I respectfully recommend, therefore, that an appropriation be included in the civil and diplomatic appropriation bill for the value of the vessel, namely, \$5,000, and the full legal interest on the same from the 5th of June, 1812, the date of her capture.

I am, sir, very respectfully, your obedient servant,

JOHN M. CLAYTON.

On the 3d of March, 1851, the Committee on Foreign Affairs of the House reported adversely to the claim, without assigning any reason.

Mr. Crooks then brought the case before the Court of Claims, and judgment was delivered on the 28th of November, 1859, the court being divided in opinion. The opinion delivered by Judge Loring awarded to the claimant \$183.50, which amount was arrived at as being the proportion to which the claimants were entitled out of the sum recovered by the United States Government from Rudd, the embezzling clerk.

This judgment goes on the theory that the court had no jurisdiction to treat the claimants other than if they were American citizens. Their equities were admitted, but the court held it could not go outside statute law to grant relief.

Scarburgh, J.'s opinion was that the claimant was entitled to the full value of the vessel, namely, \$5,000, and interest from the date of capture.

This report of the Court of Claims was submitted to Congress (Report Court of Claims, first session Thirty-sixth Congress, Report No. 240), but no action was taken.

In March, 1860, the Hon. Mr. James Crooks, the survivor of the original claimants, died. Since 1860 no application has been made to Congress. The petitioners allege that it was thought it would have been useless to ask for attention to this claim during the excitement consequent upon the civil war of the United States, and that the son of the Hon. James Crooks, in whose hands the papers were placed, became insane, and it was impossible to obtain from him an explanation of the nonprosecution of the claim for the last few years. The present petitioners allege they have lost no time since they have been in a position to urge the claim.

On the 1st of April, 1886, the claim was again commended to the favorable consideration of Congress by the message of the President referred to this committee (Ex. Doc. No. 161, Forty-ninth Congress, first session).

The Secretary of State's report refers to Mr. Clayton's recommendation that has been set forth in full above and states that a careful reexamination of the subject has led the Department of State to the conclusion that the claim is a meritorious one, and that the injuries complained of were sustained under circumstances which appear to recommend strongly to Congress the claim to indemnity for the losses occasioned by them. The report further submits that the long period which has elapsed since the claim originated should not prejudice its careful consideration.

The committee, after careful consideration of the facts, concur in the recommendation of the State Department.

There is no room for doubt that the vessel was illegally seized, taken possession of by and used for the purposes of the United States Government, and that the owners, who are represented by the present claimants, have never received any pay for the vessel. The claim was persistently pressed during the lifetime of the original owner, and has at different times received the approval of the Executive, the Senate, and the House of Representatives. The fact of the decree for the sale of the vessel showing on its face that it was made by consent has raised the question whether the claimants did not thereby assume the risk of the payment of the money into court. We do not think any weight should be attached to this contention. The consent, if given at all, must have been given by an agent, as war having been declared, it was impossible for the owner to have been present, and such consent was probably given as the best that could be done under the circumstances to save the absolute forfeiture of the vessel. The fact remains that the claimants have received an injury by the wrongful act of an officer of the United States Navy, of which act the United States Government took advantage, and compensation for which has never been made to the claimants.

The committee think that a liberal and not a technical view should be taken of the matter, and that the same reparation which would be exacted by the United States for a similar wrong to one of its citizens ought to be frankly rendered by Congress in this case. Moreover, it is doubtful whether the claimants could in any way be affected by the default of the clerk of the district court of New York. The wrong complained of is the illegal capture of the vessel, and the subsequent proceedings are referred to merely as evidence that the seizure was illegal.

The adjudication on the case in the Court of Claims did not touch its merits. Judge Loring, who delivered the judgment of the court, took the ground that if the United States Government was liable it was to the nation of the individual injured and not to the individual, and so the matter should be arranged by treaty. Judge Scarburgh, the dissenting judge, stated that, while the claim properly pertained to the treaty-making department of the Government, under the circumstances of having been recommended by the President, and so recognized by the Government, it should be allowed, and that by the principles of international law the petitioner was entitled to relief.

The committee think that the fact of the petitioners' having appealed directly to the United States Government for relief instead of through the British Government should not be a bar of their obtaining redress.

The committee concur in the report of the Committee on Claims presented to the House on February 22, 1837, second session Twenty-fourth Congress, Report No. 243, and recommend that interest should be allowed.

It appears that the original claimants, James and William Crooks, were equal owners of the *Lord Nelson*, and that each has left descendants. The committee has therefore deemed it advisable that the payments should be made from the Treasury directly to the representatives of each.

The claimants have asked that they should be compensated for the large expense they have been put to for the prosecution of this claim for so many years, and also that allowance should be made because the value of money was greater when the claim arose than it is at present. The committee do not recommend any allowance to be made on these accounts.

Thus far your committee has followed, and largely adopted, the report made by the Hon. John W. Daniel on behalf of this committee, in the second session of the Forty-ninth Congress, being Report No. 3743. But it is proper to state further that in the investigation of the claim our attention was attracted to an adverse report made in the case by a committee of the Twenty-sixth Congress, charged with its examination. That the whole case might, if possible, be cleared from doubt or any misapprehension, a letter of inquiry was addressed to the honorable Secretary of State.

A copy of this letter, together with the Secretary's reply, and a copy of the dispatch from Mr. Rush referred to therein, are given below:

In re James and William Crooks, claimants, for indemnity for loss of the *Lord Nelson*.

HOUSE OF REPRESENTATIVES,  
Washington, D. C., April 4, 1888.

SIR: As chairman of the subcommittee (Foreign Affairs) I respectfully ask for the following information: In Senate documents, first session Twenty-sixth Congress, 1839-40, volume 6, page 430, it appears that the committee charged with the

consideration of the above-stated claim made an adverse report, upon the ground that the British Government were not favorably disposed to award indemnity to the owners of *The Lydia*, an American vessel seized by a British cruiser in the Bermudas under circumstances similar to the seizure of the *Lord Nelson*.

What I desire to know is if the State Department shows what relief, if any, has been granted to the owners of *The Lydia*, and what is the present condition of said claim.

I have the honor to be, very respectfully, your obedient servant,

J. S. COTHRAN,  
*Chairman Subcommittee.*

Hon. THOMAS F. BAYARD,  
*Secretary of State.*

DEPARTMENT OF STATE,  
*Washington, April 28, 1888.*

SIR: In reply to your letter of the 4th instant, asking what relief, if any, has been granted to the owners of *The Lydia* and what is the present status of said claim, I have the honor to inform you that a thorough search in the files of this Department fails to show any paper on the subject except the dispatch from Mr. Rush, of the 29th of September, 1819, alluded to on page 4 of H. R. Ex. Doc. 161, Forty-ninth Congress, first session, nor does it appear that any claim for relief has ever been presented to this Department by the owners of *The Lydia*.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

JAMES S. COTHRAN,  
*House of Representatives.*

[Received November 25. Duplicate No. 93.]

LONDON, *September 29, 1819.*

SIR: On the 23d instant I received a representation from Messrs. W. and E. Lawrence, of this city, respecting the case of the ship *Lydia*, of New York, an American vessel belonging to Stephen Hathaway, George Hathaway, and Isaac Waite, citizens of the United States. The vessel was captured by the British during the late war and condemned in the court of vice-admiralty at Bermuda. The sentence was reverted in London and restitution ordered to the claimants. The ship being sold at Bermuda, the proceeds were paid into court to abide the result of the appeal; but since the reversal of the sentence it appears that through the default of the proper officers of the court in that island the proceeds are not now forthcoming, and the owners are likely to sustain a total loss unless this Government will interpose and protect them against the misconduct or other inability of its own officers. It is to procure this interposition that my official aid is invoked by Messrs. Lawrence, who are the agents of the owners. I do not think it necessary to trouble the Department with a copy of the correspondence that has passed between us. It will be sufficient for the present to state that, perceiving that the ship when captured was sailing under the protection of a British license, I have declined interfering. She was proceeding in ballast from New York to Charleston, thence to carry a cargo of provisions to Cadiz. The license which she had on board would have rendered her prize of war had she fallen into the hands of a cruiser of our country. I have deemed it proper to state thus much of the case, to anticipate whatever representations may be made by the parties themselves. I have said to them that if I have misjudged the merits of their application in withholding my assistance, an appeal to the Department of State will be open to them.

Count Palmella has lately got back again to this place from Paris. I learn from him that affairs between Portugal and Spain still remain wholly unsettled. The count proceeds to Rio Janeiro before long to take upon himself the office of foreign affairs.

I inclose the Times of the 4th of the present month. It contains a publication purporting to exhibit the proceedings of the general assembly of Nova Scotia in the month of March on the subject of the convention concluded with this Government last autumn. I have no other knowledge of the existence of these proceed-

ings than is afforded by this newspaper publication, and would incline to hope, from the nature of some of the sentiments and language toward the United States, that it must be spurious.

I have the honor, etc.,

(Signed)

RICHARD RUSH.

Hon. JOHN QUINCY ADAMS,  
*Secretary of State.*

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[See pp. 528, 558, 563.]

**FIFTY-SIXTH CONGRESS, FIRST SESSION.**

**January 29, 1900.**

[Senate Report No. 184.]

Mr. Daniel, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations has had under consideration Senate bill 297 and Senate bill 631, which are of similar import, each bill being entitled "A bill for the relief of James and William Crooks, of Canada."

The committee respectfully report Senate bill 631 with the recommendation that it do pass.

At the third session of the Fifty-fifth Congress a like bill was reported favorably by this committee (see Report 1874), and in that report the committee said:

This is an old but just and well-authenticated claim. Its settlement was recommended in 1819 by President Monroe—now eighty years ago. It has been often examined and reported favorably by committees of the House of Representatives and the Senate, and there is no reason why it should not be paid. In the Fifty-fourth Congress it was reported favorably by Mr. Davis from this committee, but it was recommended in the report that interest be stricken out. This bill carries 4 per cent interest, and we are informed by the attorney of the claimants that this will be satisfactory.

We are of opinion that interest at this rate should be paid, as we are dealing with the citizens of a foreign government and should do as to them as we claim for our own citizens in similar cases. This will not affect the claims of our own citizens against this Government nor constitute a precedent against the custom not to pay interest on claims in such cases.

The committee adopt and make a part of this report the report of the Committee on Foreign Affairs of the House of Representatives made during the first session of the Fiftieth Congress, No. 2861, and refer to it for the facts and reasons that justify their conclusions.

[See Senate Report 1074, Fifty-fourth Congress, first session, p. 558.]

**FIFTY-SIXTH CONGRESS, SECOND SESSION.****January 9, 1901.**

[Senate Report No. 1832.]

Mr. Lodge, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the message of the President, transmitting a report from the Secretary of State, with accompanying papers, in relation to the lynching in Lasalle County, Tex., on October 5, 1895, of Florentino Suaste, a Mexican citizen, beg leave to report the accompanying amendment intended to be proposed to the bill making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1901, and for prior years, and for other purposes, and in support thereof they submit the following statement:

While the contention of the Government of the United States has always been in answer to claims of this nature that the only guaranty provided by treaty stipulations is that aliens residing in this country shall have the same protection under the laws and in the courts provided for its own citizens, and while this position has been in every respect tenable and in a strictly legal sense justifiable, yet in almost

every instance we have deemed it advisable, as a matter of equity and justice and good policy and out of humane consideration, to pay indemnities and make reparation. Among the many cases of this nature may be cited especially that of the indemnity paid on account of the killing and wounding of Chinamen in the riot at Rock Springs, Wyo., which amounted to a large sum, and the appropriation of \$6,000 paid to the Italian Government on account of the lynching of three of its subjects at Hahnville, La., by a mob in August, 1896.

The committee also submits as a part of this report the message of the President on the subject, with its accompanying papers, which are as follows:

*To the Congress of the United States:*

I transmit herewith a report from the Secretary of State, with accompanying papers, in relation to the lynching in Lasalle County, Tex., on October 5, 1895, of Florentino Suaste, a Mexican citizen.

Following the course pursued in the case of the lynching of three Italian subjects at Hahnville, La., on August 8, 1896, and in that of the lynching of the Mexican citizen Luis Moreno, at Yreka, Cal., in August, 1895, I recommend the appropriation by Congress, out of humane consideration and without reference to the question of liability of the Government of the United States, of the sum of \$2,000, to be paid by the Secretary of State to the Government of Mexico, and by that Government distributed to the heirs of the above-mentioned Florentino Suaste.

WILLIAM MCKINLEY.

EXECUTIVE MANSION,  
*Washington, December 6, 1900.*

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THE PRESIDENT:

The undersigned, the Secretary of State, has the honor to lay before the President, with a view to their transmission to Congress, copies of the below-listed correspondence on the files of the Department of State relating to the case of the lynching in Lasalle County, Tex., in October, 1895, of Florentino Suaste, a Mexican citizen.

The case is similar to that of the lynching of the Mexican citizen Luis Moreno, at Yreka, Cal., in August, 1895, which was brought to the attention of Congress on January 18, 1898 (House Doc. No. 237, Fifty-fifth Congress, second session). In that case Congress, in the deficiency appropriation act, approved July 7, 1898 (Stat. L., vol. 30, p. 653) appropriated, out of humane consideration and without refer-

ence to the question of liability, the sum of \$2,000 as full indemnity to Moreno's heirs.

The Secretary of State has the honor to recommend that the same course be pursued in the case of the lynching of Florentino Suaste, and that Congress be requested, without question of the liability of the United States, to appropriate the sum of \$2,000 as full indemnity to his heirs.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,

*Washington, December 4, 1900.*

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*List of papers.*

Mr. Romero to Mr. Olney, January 25, 1897.  
 Mr. Olney to Mr. Romero, January 30, 1897.  
 Mr. Day to Mr. Romero, June 28, 1897.  
 Mr. Romero to Mr. Sherman, July 30, 1897.  
 Mr. Adee to Consul-General Donnelly, August 16, 1897.  
 Mr. Sherman to Mr. Romero, August 19, 1897.  
 Report of Consul-General Donnelly, September 13, 1897.  
 Mr. Day to Mr. Romero, February 21, 1898.  
 Mr. Azpiroz to Mr. Hay, May 9, 1900.

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*Mr. Romero to Mr. Olney.*

LEGATION OF MEXICO,  
*Washington, January 25, 1897.*

MR. SECRETARY: I have the honor to inform you that I have received instructions from Mr. Mariscal, secretary of foreign relations of the United States of Mexico, dated City of Mexico, January 14, 1897, to apprise the United States Government that Florentino Suaste and Juan Montelongo were attacked, on the 6th of October, 1895, near Las Raices, Tex., a station on the International Railway, by an American cattleman named Saul and Sheriff Swink Armstrong, Montelongo and Pedro Suaste, a child, being killed in the attack, and Florentino Suaste and Nicolasa Bautista, his wife, being wounded. After receiving his wound Florentino Suaste fired at Saul in self-defense and killed him.

Sheriff Armstrong notified the magistrate at Twig (Twohig), and Suaste, his wife, and little children and Montelongo's wife were arrested and taken to the jail at Cotulla, from which Suaste was taken during the night of October 11 by a mob of armed men, who fired several volleys at him and then hanged him near the place aforesaid.

The body was cut down the next morning at 9 o'clock and taken into court, and at 3 in the afternoon Sheriff Hargus told Mrs. Suaste that he was going to sell her husband's horses and wagon in order to procure food for her children. She objected to this and the children were obliged to beg for their food until the 5th of November, when

the two women were released, both of them being in a destitute condition.

Mr. Mariscal states that the Government of Mexico has no information that any investigation has been held by the proper authorities with a view to eliciting the facts and bringing the guilty parties to justice, and he instructs me to request you to be pleased to order that such an investigation be held.

Be pleased to accept, etc.,

M. ROMERO.

*Mr. Olney to Mr. Romero.*

No. 209.]

DEPARTMENT OF STATE,  
*Washington, January 30, 1897.*

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant, wherein, under instructions from your Government, you bring to this Department's attention the case of an assault in Texas, in which a sheriff of that State was a participant, upon a party of Mexicans, which resulted in the killing of one man and a child, the wounding of another man and a woman, and the subsequent lynching of Florentino Suaste, who, your note states, killed one of the assailants.

I have, in accordance with your request, brought the matter to the attention of the governor of Texas, in order that a thorough investigation may be made by the proper authorities with a view to the punishment of the guilty parties.

Accept, etc.,

RICHARD OLNEY.

*Mr. Day to Mr. Romero.*

DEPARTMENT OF STATE,  
*Washington, June 28, 1897.*

SIR: Referring to your note of January 25 last, I have the honor to inclose herewith, for your information, copy of the report of the district attorney of the Thirty-sixth judicial district of Texas in the matter of the encounter in Lasalle County, Tex., between a party of Mexicans on the one side and an American citizen named Saul and a deputy sheriff on the other.

Accept, etc.,

WILLIAM R. DAY,  
*Acting Secretary.*

[Inclosure.]

*Governor of Texas to Mr. Sherman.*

EXECUTIVE OFFICE, STATE OF TEXAS,  
*Austin, June 22, 1897.*

DEAR SIR: Referring to letter from your Department, with inclosure from the Mexican minister, relative to an alleged assault by the sheriff of Lasalle County upon a party of Mexicans, I beg to say that I am just in receipt of a statement in regard to the matter from the district attorney of that district, copy of which I beg to inclose you.

Very respectfully,

C. A. CULBERSON, *Governor.*

[Subinclosure.]

*District Attorney Davis to the governor of Texas.*ARANSAS PASS, TEX., *June 16, 1897.*

HONORED SIR: Inclosed herewith you will find note of M. Romero to Hon. Richard Olney, together with Mr. Olney's note to yourself. In reference to the matters therein contained, after as thorough investigation as conditions would permit, I beg to submit the following report, to wit:

First. I find that it is true that an encounter between the Mexicans mentioned in Señor Romero's note and one Saul, accompanied by a deputy sheriff (Norman Swink), took place in the pasture of Saul. It appears that Saul surprised the Mexicans while killing one of his cattle, and they being armed, he notified the deputy, Swink, who accompanied him in the pursuit of the thieves. When they overtook the Mexicans Saul dismounted from his horse, and while in the act of uncovering the meat in the wagon was shot with a Winchester rifle in the hands of the Mexican Montelongo, when both Swink and Saul opened fire on the Mexicans with pistols and killed Montelongo, after which Florentino Suaste took the rifle and fired the fatal shot which ended Saul's life.

Swink in the meantime wounding Suaste, the rifle falling from his hands and being picked up by Suaste's wife, who, while attempting to use it, was also wounded by a shot from Swink's pistol. The child mentioned in note was killed accidentally in the general shooting. The above are the facts developed on the part of the officer in a grand jury investigation held shortly after the killing. The evidence of the survivors of the Mexican party contradict this statement in that they say Saul fired all of the shots which killed and wounded their companions before Saul himself was killed by Suaste, and that Swink did not fire a shot, but ran from the scene of action. I conclude from the facts and surroundings, especially after considering the number of shots fired in the rencounter, and the further fact that they (the Mexicans) were in the actual possession of the stolen animal when the affray occurred, that their statement is a fabricated version of the matter, and that the officer was justified in the killing.

Second. I find that the Mexican Suaste was disposed of by mob violence, as charged in the minister's note, and that the guilty parties have never been brought to justice. An attempted grand jury investigation was had thereon, but without securing inculpatory evidence against anyone. In fact, so badly divided by personal and political feuds and prejudices are the people of Lasalle County that it is an extremely difficult matter to secure indictment against infractors of the law. In all probability the next grand jury will be such that a full and fair investigation of this matter can be had and indictments returned against the guilty parties. This spring grand jury was not so constituted.

Third. I find that the written testimony taken by the grand jury in these matters was all destroyed by fire in the burning of the court-house at Cotulla in last February. Hence the delay and difficulty in my investigation.

Assuring you that I shall labor assiduously with the next grand jury to have true presentment made of the "Suaste mobbers," and that I will fearlessly and impartially prosecute all such offenders so ascertained, I have the honor to be,

Most respectfully, yours to command,

C. A. DAVIES,

*District Attorney, Thirty-sixth Judicial District of Texas.**Mr. Romero to Mr. Sherman.*

[Translation.]

MEXICAN LEGATION,  
*Spring Lake, N. J., July 30, 1897.*

MR. SECRETARY: As I informed you in my note of June 29 last, I communicated to the Mexican Government on that day the note (No. 263) of the day before, from your Department, together with the report inclosed in it from Mr. C. A. Davies, district attorney of the thirty-sixth judicial district of the State of Texas, relating to the investigation which he had made concerning the death of Juan

Montelongo and of the child Pedro Suaste by shooting, and wounding of Nicolasa Bautista, the wife of Florentino Suaste, in Lasalle County, on the 6th day of October, 1895, and the lynching of Florentino Suaste at Cotulla on the night of October 11, 1895.

Upon examination of the report of District Attorney Davies at the department of foreign affairs of the Mexican Government, it was found:

(1) That the said report was based entirely upon the information furnished by Constable Swink concerning the attack made upon the Suaste and Montelongo families by the said constable (deputy sheriff) and the cowboy Saul. Of course, this report can not be accepted, as it proceeds from a person interested in distorting the facts, so that he is not entitled to credit.

(2) That attention should be called to the coincidence that the archives of the court of Cotulla, containing the record of the proceedings which were said to have been instituted with regard to the death of Saul, were burned a few days after your Department had sent to the governor of Texas my note of January 25 last on that subject. But, leaving aside this coincidence, it seems that the investigation should have been renewed, and that the testimony which may have been given in the record which was destroyed by fire should have been taken again, as this would certainly have furnished important data for the institution of another investigation as to the death of Montelongo and Pedro Suaste and the wounding of Nicolasa Bautista.

(3) As it is admitted in the report that Florentino Suaste was, in fact, lynched by the mob of Lasalle County, and that the grand jury could not discover the guilty parties, the circumstances of this case are similar to those of the lynching of the Italians in Louisiana, and an indemnity is, consequently, due to the heirs of the murdered man.

(4) The act which served as a pretext for the crimes upon which this complaint is founded was the stealing of an animal belonging to Saul. Mrs. Suaste did not deny this act in the declaration which she made to the Mexican consul at San Antonio, as she says in it:

As to the calf which Saul complained of their killing, it is true that Montelongo did kill it on that very 6th of October; but he did do so with the intention of giving notice of it, and paying for it.

This theft should have caused merely the arrest and punishment of its perpetrators by due process of law, to wit, by a charge previously brought by the injured party before a judge having jurisdiction in the case, and the issue of the warrant of arrest provided in such cases, and not the violent proceedings of an agent of the authorities, accompanied by the plaintiff Saul, in the manner stated by the victims, which may be regarded as the truth until a judicial investigation shall have proved the contrary.

In view of these facts, the Mexican Government instructs me to request of the United States Government an adequate indemnity for the murder of Juan Montelongo and Pedro Suaste, and for the injuries inflicted upon Nicolasa Bautista, as well as for the imprisonment to which the latter, her minor children, and Montelongo's wife were subjected at Cotulla, as it appears that justice was not done in the case of the crimes committed against the first-named parties, and that no judicial investigation was instituted to ascertain the facts, as that which

is said to have been instituted to investigate the facts concerning the death of the cowboy Saul can not be regarded as such, although it was caused by the attack and aggression upon the two Mexican families.

The Mexican Government directs me also to ask for an indemnity for the lynching of Florentino Suaste, on the ground that this Government has granted such indemnity in similar cases which have occurred in different places in this country, and particularly in the case of some Italian subjects who were lynched in Louisiana.

Accept, etc.,

M. ROMERO.

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*Mr. Adce to Consul-General Donnelly.*

No. 97.]

DEPARTMENT OF STATE,

*Washington, August 16, 1897.*

SIR: On October 6, 1895, Juan Montelongo and a child named Pedro Suaste were killed by shooting in Lasalle County, Tex. At the same time Nicolasa Bautista, wife of Florentino Suaste, was wounded. Five days later Florentino Suaste was taken from jail and lynched at Cotulla.

In regard to the killing of Montelongo and Suaste's child, and for the injury inflicted upon Suaste's wife, there is a direct conflict between the Mexican and American statements of facts.

The Mexican contention is that Suaste and Montelongo (Mexicans) were attacked by an American cattleman named Saul, and by Deputy Sheriff Swink, and that Montelongo and Suaste's child were killed and Suaste and his wife injured in the affair. It is alleged that Suaste, after receiving his wound, fired in self-defense at Saul and killed him. Suaste, his wife, and another little child, and also Montelongo's wife, were arrested and taken to the jail at Cotulla, from which Suaste was soon afterwards taken at night by a mob, shot, and hanged. The women were detained about a month, when they were released.

The facts as developed by the investigation of the grand jury of Lasalle County, and reported by the district attorney, are that Saul surprised the Mexicans while killing one of his cattle, and they being armed, he notified Swing, deputy sheriff, who accompanied him in pursuit of the thieves (it is admitted by Mexico that Montelongo did kill Saul's calf); that when they overtook the Mexicans Saul dismounted from his horse, and while in the act of uncovering the meat in the wagon was shot by Montelongo; that Swink and Saul then both opened fire on the Mexicans with pistols and killed Montelongo; after which Suaste took Montelongo's rifle and fired the shot which killed Saul, Swink in the meantime wounding Suaste, the rifle falling from Suaste's hands being picked up by his wife, who, attempting to use it, was also shot by Swink, and that the child mentioned was accidentally killed in the general shooting.

In a note of the 30th ultimo the Mexican minister at this capital states that he is instructed by his Government to request of the United States Government indemnity for the alleged murder of Juan Montelongo and Pedro Suaste, the lynching of Florentino Suaste, and for the injuries inflicted on Nicolasa Bautista, as well as for the imprisonment

to which the latter, her minor children, and Montelongo's wife were subjected at Cotulla.

Although the claim for indemnity has not been established, it nevertheless appears due to Mexico that a detailed investigation and report be made.

You are therefore instructed without delay to visit the place, investigate the affair, and collect evidence on the spot. You will also ascertain whether proper efforts were made by the county authorities to apprehend the guilty parties, being absent from your post for as brief a period as possible. Your necessary traveling expenses will be paid by the Department upon presentation of an account supported as far as possible by vouchers.

Respectfully, yours,

ALVEY A. ADEE,  
*Second Assistant Secretary.*

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*Mr. Sherman to Mr. Romero.*

No. 277.]

DEPARTMENT OF STATE,  
*Washington, August 19, 1897.*

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo. You therein, under instructions, set out certain exceptions taken by your Government to the report of District Attorney C. A. Davies, of the thirty-sixth judicial district of the State of Texas, inclosed to you with this Department's No. 263, of June 28 last, and request of the Government of the United States an indemnity for the murder of Juan Montelongo and Pedro Suaste, for the wounding of Nicolasa Bautista, as well as for the injury to which the latter, her minor children, and Montelongo's wife were subjected, and for the lynching of Florentino Suaste, all of which occurrences are stated to have taken place in Lasalle County, Tex., in October, 1895.

While in no wise admitting the establishment of any claim for indemnity against the United States, the consideration of which question is held in reserve, I have, in view of the direct conflict between the Mexican and American statements of the facts in regard to the killing of Juan Montelongo and Pedro Suaste and the wounding of Nicolasa Bautista, deemed it incumbent upon this Government and due to that of Mexico to send an agent of this Department to make a thorough investigation of this affair. This agent will at the same time investigate the matter of the lynching of Florentino Suaste. When his report shall have been received your note will have the Department's further consideration.

I desire, however, at this time to remind you that District Attorney Davies, in his report referred to, states that "in all probability the next grand jury will be such that a full and fair investigation of this matter can be had and indictments returned against the guilty parties," and that he closes his report with the assurance that he will "labor assiduously with the next grand jury to have true presentments made of the Suaste mobbers," and that he "will fearlessly and impartially prosecute all such offenders as ascertained."

Accept, etc.,

JOHN SHERMAN.

*Report of Consul-General Donnelly.*

No. 142.]

CONSULATE-GENERAL OF THE UNITED STATES,  
*Nuevo Laredo, Mexico, September 13, 1897.*

SIR: Referring to instructions No. 97, of August 16, directing me to investigate the killing of Juan Montelongo and Pedro Suaste, the lynching of Florentino Suaste, and the injuries alleged to have been inflicted on Casimira Reyes and Nicolasa Bautista and her minor children, Mexican citizens, at Lasalle County, Tex., in October, 1895, I have the honor to transmit herewith my report.

It sets forth the facts as they appear from inquiry on the spot and search for evidence elsewhere. My work was not without delays and difficulties.

Cotulla, the scene of the trouble, is a young town and small for its age, but it holds the record of southwest Texas for murder and lynching. An investigator there is persona non grata. Important papers were missing because of the burning of the court-house. The grand jury records were under seal, and neither the present district attorney nor his predecessor in office seemed to have any reliable knowledge of the case.

After a diligent hunt many of the missing papers were found. An order was obtained from the district judge for copies of all testimony taken by the grand jury.

Learning that Casimira Reyes de Montelongo, one of the Mexican women concerned, was in San Antonio, where she and Nicolasa Bautista had suits for damages pending in the United States court, I went there and had a personal interview with her. The Mexican consul at San Antonio, whom I met, courteously, permitted me to read the declarations of these women made before him, but he prudently declined my request for copies. Important information was also obtained at other points in Texas and Mexico.

The case is one of great gravity. It involves the death by violence of four human beings. More than any event of recent years it has embittered the hereditary hate of Mexican against Texan. Neither in his heart to-day expects justice at the hands of the other.

In the Mexican memory of it rankles. He knows the story only as it is current in Mexico; how two of his countrymen, one an aged man, with their wives and little children, traveling in Texas on a public highway, were set upon by a party of Americans, pistoled like beasts of prey, the old man and a child killed, the father and mother of the child wounded, the survivors dragged to prison; how, unsatiated with the murders already done, a mob, in collusion with the authorities, tore the wounded man from his family at dead of night and before their very eyes shot and hanged him; how American law has stood by unmoved, no punishment for the guilty, no reparation for the bereaved widows and children.

The truth is not as bad as this. On whatever side the weight of evidence may fix responsibility for the shooting, however blamable the authorities for not preventing the lynching or punishing its perpetrators, the whole tragic affair originated in a felony of which the Mexicans were confessedly guilty.

I am, etc.,

JOSEPH G. DONNELLY,  
*Consul-General.*Hon. WILLIAM R. DAY,  
*Assistant Secretary of State, Washington, D. C.*

CONSULATE-GENERAL, UNITED STATES,  
*Nuevo Laredo, Mexico, September 13, 1897.*

In the matter of the killing of Juan Montelongo and Pedro Suaste, the lynching of Florentino Suaste, and the injuries alleged to have been inflicted on Casimira Reyes, Nicolasa Bautista and her minor children, Mexican citizens, at Lasalle County, Tex.

REPORT BY CONSUL-GENERAL DONNELLY.

I shall begin with an account of the affair as it appears from my investigation, subsequently treating in detail such portions thereof as are matters of controversy.

ORIGIN OF THE TROUBLE.

On the afternoon of October 6, 1895, the Mexicans named, while traveling in Lasalle County, Tex., entered upon the ranch of one U. T. Saul, killed a calf belonging to him and, leaving the hide, head, and entrails in the brush, carried away the carcass. Under the laws of Texas this was a crime punishable by confinement in the State penitentiary of not less than two or more than four years. (R. S. Texas, art. 882. Exhibit 1.)

DISCOVERY OF THE CRIME.

Before sundown the same day Joseph Hocut, foreman of the ranch, came across the evidences of the crime and at once sent Woodlief Thomas, an employee, to notify Mr. Saul, at Cotulla. (Exhibit 2.)

THE PURSUIT.

Saul summoned Deputy Sheriff Swink and a State Ranger and, with Thomas, started after the thieves. A short distance from Cotulla they met some Mexicans with a covered wagon, which they searched and found nothing. These told them they had passed another party of Mexicans with two wagons going south. Thomas and the ranger left the party at this point, and Saul and Swink continued the chase. (Exhibit 3.)

THE SHOOTING.

After about two hours' ride the Montelongo party were overtaken. They were armed with Winchesters: the officer and Saul with pistols. In the affray that followed Montelongo was killed and Florentino Suaste, Nicolasa Bautista, Pedro Suaste, and Saul were wounded, the last two mortally. (Exhibit 4.)

AFTER THE SHOOTING.

Deputy Swink, who was uninjured, at once sent for a physician, a justice of the peace, and the State Rangers. The doctor looked after the wounded, the justice held an inquest on Montelongo, and the rangers took the surviving Mexican in custody, conveying them to the Cotulla jail in the morning. (Exhibits 5, 6, and 7.)

## INQUEST AND EXAMINING TRIAL.

Saul died while being taken to Cotulla. An inquest was regularly held on his body, which found "That on the 6th day of October, 1895, Florentino Suaste, Casimira Reyes, and Nicolaso Bautista, with malice aforethought, did shoot deceased with a gun, inflicting upon the body of deceased, just above the left nipple, a gunshot wound, from the effects of which the said deceased died." (Exhibit 8.)

An examining trial of the accused was subsequently held. The papers of this trial are missing, but from the statement of the justice and the attorney who acted therein it satisfactorily appears that the proceedings were fairly conducted and that on the evidence submitted Suaste was committed without bail and the women held on bond. (Exhibits 6 and 9.)

## THE LYNCHING.

Saul's death aroused much public feeling. He was a man of means, highly thought of, and left a wife and four children. Threats of lynching were publicly made, and the captain of the State Rangers placed men on guard at the jail. These, however, were withdrawn within three days. On the night of October 11, when the jail was in the sole care of the jailer, Suaste was seized by a party of three or four men and put to death by shooting and hanging. (Exhibit 10.)

## ACTION OF THE AUTHORITIES.

There was an inquest held on Suaste's body, which found that his death was caused by parties unknown. (Exhibit 11.) The grand jury at the November term, 1895, investigated both the killing and lynching, but the evidence taken by them does not appear to have been reduced to writing, and their only action of record in the matter was a recommendation to the court for the release of Nicolasa Bautista and Casimira Reyes. (Exhibits 11, 12, and 13.) This was done November 5, 1895.

The grand jury for the May term, 1896, also considered the lynching and took the testimony of the jailer, Nicolasa Bautista, and Casimira Reyes, but no indictments were found.

## MATTERS OF CONTROVERSY.

Of the foregoing account several important features are matters of more or less controversy, to wit: (1) The stealing of the calf, (2) the shooting, (3) the lynching, (4) the action of the authorities.

I therefore shall consider each separately in the light of the evidence.

*Stealing the calf.*—While it is admitted by the Mexicans that a calf was killed by Montelongo (Inst. No. 97, of August 16), Casimira Reyes says it was found on the road; that they looked for its owner with a view of working out its value, and Nicolasa, through her attorneys, claims that in any event Montelongo alone was responsible for the killing. (Exhibit 14.) This contention is not borne out by the facts. The hide, head, and entrails were not discovered on the road, but 150 yards from the road, in the brush. (Exhibit 2.) No inquiry appears to have been made by them anywhere as to the ownership, and the carcass was found in their possession where they were overtaken, fully 7 miles from where the calf was killed. There is, besides, their own testimony at the inquest held on the body of Saul. (Exhibit 8.) "We

did kill a calf" was the voluntary statement of Suaste. "My husband and Juan (meaning Montelongo) together killed a calf" swore Nicolasa Bautista. "I don't know what they did with the hide. We each took half of the meat."

This testimony I take to be conclusive of their common guilt.

*The shooting.* Other than the parties concerned there were no witnesses to the shooting.

The night was dark, the road remote. Only the survivors can know or tell the details, and these, unfortunately, tell conflicting stories. Swink declares the Mexicans the aggressors (Exhibit 4); the Mexicans put the blame on the Americans. Swink's statement stands alone, while on the Mexican side the voluntary statement of Suaste at the inquest is substantially confirmed by the Mexican women. (Exhibit 8.) But this seeming preponderance of evidence in favor of the Mexicans is overcome by the fact that several subsequent statements made by these women vary from the first in most important details. At the inquest (Exhibit 8) Suaste puts the blame on Saul and virtually exonerates Swink. He declared that the dead American shot him and Montelongo, and that he did not see the other American (Swink) shoot at all. Nicolasa tells the same story, saying that the other American (Swink) did not shoot at all; that he slipped to one side. "I did not see him have a pistol." Casimira Reyes says the large man (Saul) did all the shooting. "I did not see the other man (Swink) shoot at all." But in her petition to the circuit court of the United States in and for the western district of Texas, in an action for damages against Swink (Exhibit 15), Casimira declares that her husband was killed by gunshot wounds inflicted at the hands of Saul and Swink, and in her verbal statement to me in San Antonio (Exhibit 14) she made out Swink to be the chief assailant.

It is proper to consider also the credibility of the parties. Swink and Saul bear good characters. As much can not be said for Montelongo and Suaste. Swink was an officer of the law—had made many arrests without trouble. Saul was a man of means, a good citizen, and particularly remarked in the community for his amiability and indisposition to violence. (Exhibit 16.) Of Montelongo I could learn little. He was the common Indian type of Mexican laborer. He had admittedly stolen a calf. Suaste, his accomplice, was of the same type, but with more of a record. He appears to have been a deserter from the Mexican army. There is even serious doubt of his marriage with his alleged wife, Nicolasa, as there is no record thereof in the town where she stated such marriage to have occurred. Nicolasa herself is alleged by a witness to have admitted that she was not married. (Exhibit 17.)

Conceive, as we may, the situation a moment before the tragedy: On the one side the owner of the stolen property and an officer of the law. On the other side Montelongo and Suaste overtaken, conscious of their crime, the stolen property in their possession, knowing by long residence in Texas the consequence of arrest, with rifles in their hands or in reach. From which side was apt to spring the impulse of murder?

*The lynching.*—There are few even in Cotulla callous enough to justify the lynching. There are many, however, who profess to believe that it only anticipated the action of the law; that Suaste, by the murder of Saul, had forfeited his life to the State, and that lynching saved

the cost of his trial and execution; but, while ready to give ear to every opinion in my quest for facts, I must say I heard nothing that palliates the crime of lynchers. Crime it was, deliberate and indefensible. The courts had not passed upon his alleged offense. He was in the custody of the law, and therefore in the law's protection. His dead friend, his dead child, the wounded mother of his children, his own condition, shot as he was in four places, all the circumstances made the act particularly cruel and revolting.

*Action of the authorities.*—There can be no just criticism of the authorities in the matter of the arrest or imprisonment. Suaste and the women were duly committed on the finding of the inquest (Exhibit 8) and after an examining trial held in the manner provided by the law (Exhibit 6), and the minor children were neither arrested nor imprisoned, but were permitted to remain with their mother as an act of charity (Exhibit 12); but there is grave question whether the authorities made adequate efforts to prevent the lynching or to apprehend and punish its perpetrators. Captain Brooks, of the State Rangers, whom I know to be a trustworthy man and officer, seems satisfied with what was done. (Exhibit 7.) He admits having been beguiled into the belief that public feeling had quieted down and there was no danger. The sheriff may have shared his opinion; but to my knowledge the proposed lynching was heralded by the press throughout the State was expected from day to day and finally consummated as a matter of course. I remember the occurrence vividly owing to the feeling it excited among the Mexicans here and my conviction that the governor of the State (who subsequently displayed such energy in preventing a glove fight) should call the militia to Cotulla.

Within four days of their incarceration Suaste and his family were left to the sole protection of Lewis Underwood, the jailer, a man neither physically nor mentally strong. There was no resistance to the lynchers. The ease with which they entered and seized their prey was described to me by the jailer himself (Exhibit 10), with many chuckling comments on his own discretion in making no outcry and not saying anything of the lynching until the next morning. The authorities have been charged with negligence—a negligence so gross as to well arouse suspicion of collusion. (Exhibit 20.) They knew the threats. They knew the sanguinary record of the town. Twice before from that same jail men had been taken by mobs and done to death, once in broad daylight, the whole populace onlookers or participants. (Exhibit 21.) Surely, under the circumstances, a proper regard for the safety of the prisoner should have moved the sheriff to keep his deputies at the jail or within call for a longer period than four days, instead of leaving it so that anyone could enter without resistance.

It would have been some palliation of their failure to prevent the lynching and would have done much to suppress the talk of collusion had there been active and earnest efforts made to find and punish those who were guilty of it. Such efforts do not satisfactorily appear. Captain Brooks states that he followed every clue, but did not succeed in finding any proof of guilt. Several of the deputy sheriffs told me the same story. On the other hand, Mr. Smith, editor of the local paper, holds "it is not possible a man could be taken from that jail in the middle of the town by so many and shot and hanged without their leaving some traces;" and many who would not permit me to quote

them spoke in the same strain. The grand jury met the following month and considered the matter. Upon the jury were many of the most prominent citizens of the county (Exhibit 19), but they made no indictments, nor is there any record as to whom they examined. (Exhibits 11½ and 12.) The grand jury, at the May term, 1896, also took up the case and examined the jailer, Nicolasa Bautista, and Casimira Reyes (Exhibit 22), but nobody was indicted.

It may not be proper in this connection to state that it would be out of the usual course of Lasalle County grand juries if any indictments had been made—three lynchings from that same jail, and not a single instance of punishment for the perpetrators. Grand juries nowhere rise above the level of the community. The very justice of the peace who held the inquest and examining trial and committed Suaste without bail (I am reliably informed) was the leader in a former lynching. But he is none the less popular. I did not meet the gentleman who held the office of sheriff at the time. He was not in the county during either of my visits. It is known, however, that he has been charged with complicity in the lynching, and he is now a defendant in an action for damages growing out of it and pending in the United States circuit court of western Texas. (Exhibit 18.) But I have met the then district attorney. It might be presumed that this gentleman could fully inform me of the facts, and particularly as to the measures taken by the authorities. A district attorney is the legal adviser of the county, the heart and soul of a grand jury; his the brain that plans and the energy that prosecutes; by his zeal, courage, and intellect may be gauged the standard of a county's criminal procedure.

But Mr. Walton seemed to have no knowledge of the case. I need only refer to his verbal statement. (Exhibit 21.) He was not present at the inquest or examining trial. He was in Cotulla during the session of the grand jury which considered the killing and lynching, but "court was in session" and he "gave the proceedings of the grand jury little attention." "I have no recollection," said he, "of the nature of the testimony produced before the grand jury. I know there were no indictments." He knew there were no indictments, and this is positively the only reliable information obtainable from him or others—there were no indictments. I mean no reflection on the district attorney. His district includes many counties and an enormous territory. It may have been impossible for him to give any one county or case that close attention which is common from such officer in more settled communities. But the fact remains—the grand jury that considered the killing of Montelongo and Pedro Suaste and the lynching of Florentino Suaste was without the effective counsel and active cooperation of the district attorney. The grand jury saw fit to place its proceedings under seal—why is a mystery, for when I had the seal broken by order of the district judge they disclosed nothing. No list of witnesses summoned, no record of witnesses examined, no line of testimony taken! Even the second grand jury which considered the matter shows only the testimony of three witnesses.

There can be but one conclusion from all this—the county authorities did not do their full duty.

Given a grand jury of honest and sensible men, a district attorney resolute and brainy, a sheriff capable and trustworthy, one session at Cotulla would in my opinion reach the root of this whole disgraceful business.

From the facts and for the reasons set forth I find as follows:

1. The Mexicans, Juan Montelongo and Florentino Suaste, accompanied by the women and children named, on the 6th day of October, 1895, in Lasalle County, Tex., committed the crime of cattle stealing.

2. In the effort of Mr. Saul, the owner of the stolen property, and a deputy sheriff to effect their arrest shooting took place, resulting in the death of Saul, Montelongo, and a child, and the wounding of Florentino Suaste and Nicolasa Bautista.

3. It is the reasonable presumption from all the circumstances that the Mexicans opened fire to resist capture and that the Americans returned fire in self-defense. This presumption is not overcome by the conflicting and varying statements of the survivors.

4. The arrest and imprisonment of the Mexicans after the shooting was in due form of law and by the proper officers.

5. The minor children of the Mexicans were neither arrested nor imprisoned, but permitted to accompany and remain with their mother as an act of charity.

6. The lynching of Florentino Suaste could have been prevented by reasonable precaution on the part of the county authorities.

7. It does not satisfactorily appear that proper efforts have been made to apprehend and punish the guilty parties.

JOSEPH G. DONNELLY,  
*Consul-General.*

#### EXHIBIT 1.

[From Revised Statutes of Texas.]

ARTICLE 882. If any person shall steal any cattle or hog, he shall be punished by confinement in the State penitentiary not less than two nor more than four years.

#### EXHIBIT 2.

*Statement of Joseph Hocut, Lasalle County, Tex., September 1, 1897.*

I am 39 years old and an American citizen; have lived in this county for eight years; remember the shooting and killing of U. T. Saul and certain Mexicans on October 6, 1895. At the time I was in the employ of Mr. U. T. Saul; I was foreman on his ranch on that day. I came across indications of the killing of a calf on Mr. Saul's land about sundown that day—there were the hide, head, and entrails about 150 yards from the road in the brush. I knew at once what animal had been killed and sent a boy named Woodlief Thomas, who was employed on the ranch, to notify Mr. Saul, who was at Cotulla.

This was about sundown.

J. H. HOCUT.

Statement made before me September 1, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

#### EXHIBIT 3.

*Statement of Woodlief Thomas, Cotulla, Lasalle County, Tex., September 1, 1897.*

Am 21 years of age. Have lived in Texas all my life and in Lasalle County for the past ten years. On October 6, 1895, was working for U. T. Saul. Was with

Joseph Hocut on that day when he came across the evidences of the killing of a calf. There were the head and entrails and he knew the animal killed. It was the calf of a cow that had been shipped. He sent me at once to notify Mr. Saul. I went into Cotulla, about 3 miles away, and found Mr. Saul at home. I told him of the occurrence, and he asked me to go down town and see if there were any rangers in town. I did so, and found one. He also asked me to look up Deputy Sheriff Swink. I found Swink also and told them the trouble. Saul joined us after a while and we four started after the thieves. At the river near Cotulla we met some Mexicans in a covered wagon. We asked them what they had and found nothing. They told us they had met a party of Mexicans, two wagons, farther down, going south.

Swink told me here I had better not go, there might be trouble. The ranger said he had an engagement. Swink and Saul went on together. I came back home and the ranger went back to Saul's house, where he had an engagement with a lady.

WOODLEE THOMAS.

Statement made and subscribed before me September 1, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

#### EXHIBIT 4.

*Statement made by N. A. Swink's attorneys to United States Consul General Donnelly.*

About the date of October 6, 1895 (Sunday), one of Saul & Maltsberger's hands reported to Saul that Mexicans traveling through their pasture had killed a calf or yearling of theirs and left the hide, taking the meat with them. Saul called on Swink, as deputy sheriff, to go with him and overtake the Mexicans. They left Cotulla about sunset, and caught up with the Mexicans about 8 or 9 o'clock that night.

The Mexicans had driven out on the right-hand side of the road, and were unharnessing their teams. As Saul and Swink rode up, Swink called them to the side of the wagon and told them that a calf had been killed; that he was an officer, and wanted to search their wagon for the meat. They replied, "All right; get down." This placed the Mexican, Suaste, in front of Saul, and Montelongo in front of Swink, a little to his right. Saul got off his horse first. There were two wagons, headed in the direction taken by Saul and Swink. The hind wagon had one horse to it, which Montelongo was unharnessing. The front wagon had two horses, being unharnessed by Suaste. Saul and Swink rode up on the left. Suaste immediately came up to the front of his wagon, and Montelongo came forward, placing himself at the rear of Suaste's wagon. The women and children were scattered about, but collected together against the side of the front wagon, thus placing themselves between Suaste and Montelongo, the whole party assuming the following positions:

Front wagon.

Hind wagon.

Suaste.

Montelongo.

Women and children.

Saul.

Swink.

[Public road.]

Swink was riding a skittish horse, and, as there was a bush to his right, upon halting he got off and turned to tie the horse to this bush, thus placing his back to Suaste and Saul. As he did this he heard a shot, and heard Saul cry, "I am shot." He turned just in time to see Saul fall. He saw, also, while turning, the man Montelongo raising his Winchester over a woman's shoulder pointing at him. He caught the woman by the head and jerked her to one side, at the same time shooting the man Montelongo. While this was going on, Saul was lying on the ground; lying on his elbow, and exchanging shots with Suaste. When Montelongo fell, Swink, turning in the direction of Saul, saw Suaste turn at the same time toward himself. They fired at the same time at each other. Suaste fell under the wagon. Swink at once walked to Saul and picked him up.

The result of the encounter was the killing of Montelongo, the wounding of Suaste, and also of a child, who afterwards died, and the wounding of a woman. Saul was also fatally wounded, dying on the road to Cotulla.

As Swink carried Saul off, the women and children were screaming. While Swink was holding Saul's head in his lap, the Mexican woman, Nicolasa, exclaimed, "My baby is killed and I am wounded." Swink carried Saul off 40 or 50 yards from the road and, leaving him there, went off on foot to Twohig for assistance, both horses having run away.

When Swink returned with help, Saul had dragged himself about forty steps farther, and as he heard his friends coming fired one shot to let them know his whereabouts.

They brought a handcar with them and placed Saul on same, and started to Cotulla with him, but he died before he reached there. A portion of the party who came from Twohig remained with the Mexicans. Upon reaching Cotulla with Saul's corpse Swink got the coroner and sent a runner on horseback to Captain Brooks, captain of the State Rangers, asking him to send him some men, and sending word of what had happened. Captain Brooks at once sent three or four men (State Rangers), and the coroner, Swink, and the State Rangers went back to the Mexicans. They put the dead Mexican in a wagon and brought him to Cotulla. The wounded man, Suaste, and the others were left in charge of the rangers.

The time of Swink's second return to Cotulla was about 8 o'clock in the morning. Swink went at once to the telegraph office and wired Sheriff Hargus, who was at Encinal, what had happened. Swink then returned to Twohig and brought the wounded Mexicans on the evening train to Cotulla. Sheriff Hargus was on the train at Twohig, having taken it at Encinal, and on arrival at Cotulla put the Mexicans in jail.

As to the lynching of Suaste, Swink knows nothing whatever of that. The morning after the lynching he was notified by the jailer that Suaste had been taken out of the jail the night before by a mob and carried away. Swink at once notified Sheriff Hargus by telegram to Encinal, where Hargus was, and a State Ranger who was with Swink notified Captain Brooks, of the Rangers, by sending a runner with a note.

CONSULATE-GENERAL, UNITED STATES,

*Nuevo Laredo, Mexico:*

The foregoing statement was handed to me by N. A. Swink at San Antonio on August 27, 1897, and subsequently declared by him to be true in every particular.

JOSEPH G. DONNELLY, *Consul-General.*

#### EXHIBIT 5.

*Statement of Dr. D. S. Livingston, Cotulla, Lasalle County, Tex., September 1, 1897.*

Am a physician, duly licensed; have lived and practiced medicine in Cotulla three years and eight months. I remember the killing of the Mexicans on October 6, 1895. Was notified of the affair by N. A. Swink, deputy sheriff, on the night of the killing and went at once to the scene on horseback, making the distance in one hour. By the time I reached there Saul had been taken away. I found the dead Mexican and three wounded Mexicans, one a child mortally injured. The latter I treated and looked after until daylight the next morning.

I talked with the wounded through an interpreter. I talked with Florentino Suaste, the man who was subsequently lynched. They all agreed that Saul did the killing; that he was the boldest—muy bravo—they said.

I was sent for, of course, to see Saul, but not finding him, was called to give professional treatment to the wounded Mexicans. I treated them also when at the jail, but did not talk particularly about the shooting. In my opinion, they were given proper care and attention. Suaste would have surely lived had he not been lynched. The wounded woman subsequently recovered.

I examined the child when I came and found it mortally wounded. It died the next day.

D. S. LIVINGSTON, *M. D.*

Statement made and subscribed before me September, 1, 1897.

JOSEPH G. DONNELLY,  
*United States Consul-General.*

## EXHIBIT 6.

*Statement of M. T. Dunham, justice of the peace, made at Cotulla, Tex., September 1, 1897.*

Am an American citizen, 69 years of age; have resided in Lasalle County, Tex., for sixteen years; have been justice of the peace nearly four years; am still justice. I remember the killing of U. T. Saul and certain Mexicans on the night of October 6, 1895. I was notified of the killing by Deputy Sheriff Swink and went out there the same night. I held an inquest at the scene of the killing on the body of the dead Mexican, Montelongo. I examined Deputy Swink and the Mexican women. I held an inquest on Saul, who had been brought to Cotulla. In a few days I held an examining trial of Suaste and the women for the killing of Saul.

Suaste was committed without bond and the women held on bond. I turned over all the papers of the several inquests and the examining trial to the clerk of the district court.

My docket was in the county attorney's office and all other papers in these matters were in the custody of the clerk of the district court.

M. T. DUNHAM.

Statement made and subscribed before me September 1, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

## EXHIBIT 7.

*Statement of Capt. J. A. Brooks, Cotulla, Lasalle County, Tex., August 25, 1897.*

I, Capt. J. A. Brooks, do hereby declare that I am a resident of Lasalle County, Tex., and have been such for nearly seven years.

I am at present captain of the rangers, a body of troops in the State service. Have been captain of rangers for the past eight years. I remember the killing of Saul and the Mexicans in October, 1895. I was notified of the occurrence the same night and sent four men who took charge of the wounded Mexicans and the other prisoners. My men brought them to jail at Cotulla. On account of excitement over the killing I left two or three of my men with the sheriff to help preserve order and protect the prisoners.

After the first day everything seemed to quiet down. I consulted with the sheriff as to the necessity of leaving my men with him any longer. We both agreed that there was no danger of any violence. Only one of my men was at the jail on the 10th of October, 1895, and he was withdrawn, leaving the jail in the sole custody and care of the sheriff. The lynching occurred on the night of the 11th. I have no personal knowledge of the lynching except by hearsay.

It was my duty to ascertain and apprehend the parties concerned in the lynching. I tried to do so, and followed every clew, but did not succeed in finding any proof of guilt.

I spoke with the jailer and with the Mexican prisoners, but they did not give me any description or any name that would serve to identify the lynchers.

All the parties who were suspected of knowing anything of the occurrence were summoned before the grand jury and examined. The grand jury found no indictments. A second grand jury also investigated the affair and failed to find any indictments. I know all of the men acting on the grand jury and believe them to be among the best citizens of Lasalle County.

J. A. BROOKS,

*Captain Commanding Company F, F. B.*

Declaration made and subscribed before me August 25, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

## EXHIBIT 8.

*Testimony taken before M. T. Dunham, justice of the peace No. 1, on the inquest on the body of U. T. Saul, the 9th day of October, 1895.*

## VOLUNTARY STATEMENT OF FLORENTINO SUASTE.

On being asked by the justice whether or not he wished to make any statement in this connection, and being advised that he would not be required to do so if he did not so desire, he says:

These men, two Americans, came up as we were unhitching our teams, each of them with a pistol in hand, and one of them caught me by the arm and jerked me back; one of them said, "You are," "You are," and begun shooting at me, and then I went around my wagon to look for my gun to see where it was, and as I turned to the wagon he shot me in the side, and when I got my gun he shot me in the breast; they then thought I was dead and they turned around me, and then the dead man (the American) turned to the Mexican who was with me around and shot him in the breast; he then stood with his pistol ready to shoot me again; he then fired a shot and hit my wife. I was then down on my side holding my gun across my body, and I had strength enough to straighten myself on my side, when I fired at American and shot him. I did not shoot any more after that. I don't know if the man fell or not; there were no more shots fired after that.

When the two Americans came up to the camp they pulled us away from the wagon; they spoke to us in English; we did not understand them. We did kill a calf that morning about 1½ miles from where we were camped when these men came up; it was on the road; we did not know who owned it. When I went to look for my gun is the time I was shot. I got my gun from the inside of the wagon. My wife did not give me the gun; the first time the dead American shot at me my wife threw up his arm; I was shot only one time. The name of my companion was Juan Montoballo; don't know how often he was shot; he never got his gun out. We killed the calf about 4 o'clock that evening. These Americans came to our camp about 8 o'clock; it was kind of dark or cloudy; the moon was up. There were two wagons in our camp; I was in front of my wagon; Juan was behind his wagon. Juan's wagon was right behind mine; there was one woman just getting off the wagon, the other was off already. One of them came to me first, this was the one I shot; he caught me by the arm and jerked him; he did not shoot me until he got away from him a little; I then went behind my wagon; the American followed me; he was right behind me, close; he shot me before I got my gun; the dead American fired more than twice; when I was first shot I was at the side of my wagon. I don't know if this was the time my wife knocked up his hand; she did this every time he fired. My wife stood between me and the man that was shooting all the time he was shooting.

I was distant about 12 feet from Juan at the time of the shooting. The same man shot him who shot me. After he shot Juan the American shot my wife. She was close by me when she got shot on my side. I did not see Juan when he was shot. I saw him fall. I saw the man shoot at him. It was the same man who shot me. I did not see the other American shoot at any time. When I went around the wagon I went around to the west side. I was shot when I came back to the east side. I did not have my gun then; I could not find it. I found the gun on the east side of the wagon. I was wounded when I got my gun. I think I was shot the first time just as I got my gun. I think I was struck by the first shot the American fired. The gun of Juan was in the wagon belonging to him. He had a ramrod in the gun. We killed the calf with Juan's gun. Juan killed the calf. He had an express wagon. I said nothing to the Americans at any time. Juan did not say anything to them either. The Americans said nothing to either one of us at the time. I did shoot over my wife's shoulder. She was wounded and lying down when I fired the first shot, and I was lying down also at the time. The man I shot was standing up when I shot him with his pistol carried straight up. I did not see the other American shoot or do anything.

Sworn to and subscribed.

his  
FLORENTINO + SUASTE.  
mark.

## TESTIMONY OF NICOLASA BAPTISTA.

The men got down off the wagons and commenced unhitching the horses, when two Americans came up; one of them caught my husband, Florentino Suaste, by the

arm, and the other began shooting, and he shot at my husband and wounded my child, which was in one of the wagons; he wounded my husband—don't know if it was by the first shot, but it was one of the first three shots. He went then and killed the other Mexican who was with us. When the other Mexican and my husband was wounded, the same American fired more shots. I went up to the wagon to get the child. I don't know which of the shots struck me. My husband fired one shot when he was down, and no more. My husband fired the last shot while he was on one knee and on one elbow. My husband was in front of the wagon when the Americans came up; one of them got off his horse and caught my husband by the arm and the other commenced shooting him. The other American did not shoot at all—he stepped to one side. I did not see him have any pistol.

My husband did not do anything while this man was shooting at him; he did not run around the wagon; his gun was on the outside of his wagon; he did not run to his wagon to get his gun; he did not go to his wagon at all; when he fell down he turned his hand and got the gun; it was outside the wagon; I did not give him the gun; he did not run around on the west side of the wagon; he ran around the east side of the wagon, but he did not get the gun; I don't know whether the gun was on the ground or standing up against the wagon; he did not have the gun on the horse; I was on the wagon when he was unhitching the horses; I don't know where the gun was at that time; I don't know whether my husband laid it on the ground or stood it up by the wagon; he was riding one horse helping to pull the wagon, as one of the horses was played out; I did not stand between the American who was shooting and my husband at the time; I did not knock his pistol or his arm up at all when he was shooting; I was on one side of my husband when he was shot; I had taken my child out of the wagon at this time; I was about half standing up; I was not lying down at the time I was shot then; I was shot about the last shot that was fired.

My husband was on the east side of the wagon when he was shot. Juan was behind our wagon unhitching his horses when he was shot. I heard the shot, but did not see him shot. There was only one American shooting; the other did not shoot at all. I don't know how many shots were fired. I heard the shot, but did not know Juan was shot until the Americans were gone. The same man who shot my husband shot Juan. My husband and Juan together killed a calf that evening. I don't know what they did with the hide; we each took half of the meat. The Americans never said anything when they came to our camp; they never mentioned meat. I was right up against my husband when the shooting was going on; the children were all at the wagon tongue. I was standing by the one that was wounded. I was on the east side of the wagon stooping over to get my child when I was shot. My husband was down then. I saw the same man who shot my husband shoot Juan. Juan had a gun. It was on the express wagon of his. I don't know who shot the calf. I was bathing when they went off, and did not see them go off or come back. My husband said nothing to the Americans; they said nothing to us; there was not a word said all the time.

her  
NICOLASA BAPTISTA.  
mark.

Sworn to and subscribed before me this 9th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

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TESTIMONY OF CASIMERA REYES.

Being duly sworn, says:

I am the wife of Juan Montaballo, deceased. Two Americans came up to our camp. The one who shot was a large man. The big man began shooting at Florentino Suaste and then at my husband. The man fired a good many shots; don't know how many. I went to my husband when he was down. Florentino fired one shot then at the large American. I was busy attending to my husband. The Americans never said anything when they came up. The large man did all the shooting; the other did not shoot at all. The large American came up shooting, the other did nothing; he did not take hold of any of them. Florentino was in front of his wagon at the time of the first shooting began. I and my husband were unhitching the wagon while the shooting was going on. Neither of the Americans took hold of Florentino at any time. Florentino did not run around his wagon. I don't know how Florentino got his gun. He was shot first; he was wounded when he fired. The American shot Florentino first, and then Juan.

Myself and my husband were unhitching our horses when he was shot. The large American asked them if they could search the wagon for beef. I don't know whether he asked them in English or Mexican. I saw him put out his hand as though he was searching for something. We had meat in the wagons. We got it on the other side of the Nueces from here. We did not kill a calf that evening. They did kill a calf that day. My husband killed it that evening. When the Americans came up my husband's gun was in the wagon. Don't know as it was loaded. Florentino's gun was in the wagon at the time, I suppose. I can not tell how many shots were fired. The big American shot Florentino first, and the next shot he fired at my husband and struck him. When the Americans first came up they got down, and then the big one began shooting. It was after he shot that he looked in the wagon. Don't know if the American fell when Florentino shot at him. I did not see Florentino shoot. He did shoot once. She saw him shoot one time when he was down. The Americans were standing in the road when Florentino shot. Florentino was stooped or half lying down when he fired that shot.

her  
CASIMERA x REYES.  
mark,

Sworn to and subscribed before me this 9th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

CONCEPCION SUASA, being sworn, says:

At the time of the occurrence I was asleep and I did not hear anything. The shooting woke me up, but I was so scared I don't know what happened. I heard nothing said between the parties. I heard the shots, but did not see any person shooting. I ran off in the brush and came back after the Americans went off. I did not stand by the wagon wheel when I got out of the wagon; I was scared and ran off in the brush.

her  
CONCEPCION x SUASA.  
mark.

Sworn to and subscribed before me this 9th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

MARTINA SUASA, being duly sworn, says:

My name is Martina Suasa; at the time of the shooting I was on the tongue of the wagon; I did not see any person shooting; I was there at the time the Americans came up; I did not see Florentino or my mother; I did not hear the Americans say a word; I did not see my sister Concepcion run out in the brush; I saw nobody with a gun.

her  
MARTINA x SUASA.  
mark.

Sworn to and subscribed before me this 9th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

ANDREW ARMSTRONG, Sr., being duly sworn, says:

I saw the body of U. T. Saul after his death and after he was washed. He was shot just over the nipple, under the collar bone, on the left side. I felt the bullet which entered that wound below the shoulder blade behind, just under the skin. I would judge the bullet lodged about 6 or 8 inches lower than where it entered. I do not think it possible for a man lying down to have fired that shot, from the fact that the bullet ranged down so much. The man who shot Saul must have been standing up and over him.

ANDREW ARMSTRONG, Sr.

Sworn to and subscribed before me this 9th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

Adjourned to October 11, 1895.

G. W. HENRICHSON, sworn, says:

On the night of the 6th October, 1895, I went to the place where Mr. U. T. Saul and some Mexicans were shot. I found one Mexican man dead and one Mexican man wounded. Mr. Saul was badly wounded, and he stated that he knew he was going to die. He was taken on the hand car to Cotulla that night and died on the way home; this was in Lasalle County, Tex. The wounded Mexican said that he shot Mr. Saul, and also stated that two Americans came to their camp that night cursing, and said they wanted to search their wagons. He stated that they killed the calf, but that they were starving. The Mexican woman who was with him and was also wounded made the same statement, or they jointly made a statement to this effect. Mr. Saul said several times that he was badly hurt and was going to go. He said he would not have been shot had it not been for this woman; that the woman got in his way.

G. W. HENRICHSON.

Sworn to and subscribed before me this 11th day of October, 1895.

M. T. DUNHAM,  
*Justice of the Peace, Precinct No. 1, Lasalle County, Tex.*

The State declined to put any other witnesses on the stand, whereupon the examination closed.

THE STATE OF TEXAS, *County of Lasalle:*

This is to certify that upon an inquest held upon the body of U. T. Saul, held on the 9th and 11th days of October, A. D. 1895, before me, the undersigned, I find as follows:

First. That the name of deceased is U. T. Saul.

Second. That deceased was a male person about 39 years old.

Third. That deceased came to his death about  $1\frac{1}{2}$  miles north of Twohig, in Lasalle County, on the 6th day of October, 1895, at about 9 o'clock, p. m.

Fourth. That the death of deceased was caused as follows, and in the following manner, to wit: That on the 6th day of October, 1895, Florentino Suaste, Casimira Reyes, and Nicolasa Baptista, with malice aforethought, in said county and State, did shoot deceased with a gun, inflicting upon the body of deceased, just above the left nipple, a gunshot wound, from the effects of which said gunshot wound the said deceased died at the time and place hereinbefore stated.

M. T. DUNHAM,  
*Justice Peace, Precinct No. 1, Lasalle County, Tex.*

THE STATE OF TEXAS, *County of Lasalle:*

I, G. H. Knaggs, clerk of the county court of Lasalle County, Tex., do hereby certify that the foregoing is a true and correct copy of the original proceedings and testimony taken before M. T. Dunham, justice of the peace, Precinct No. 1, Lasalle County, Tex., at the inquest held on the body of U. T. Saul, October 9, 1895, as the same appears on file in my office.

Given under my hand and the seal of said court at office in Cotulla this 26th day of August, 1897.

[SEAL.]

G. H. KNAGGS, *Clerk.*

#### EXHIBIT 9.

*Statement of W. J. Bowen, made at Cotulla, Tex., September 1, 1897.*

I am an American citizen; resident of Lasalle County, Tex.; 35 years of age. Have resided here for eleven years and been a practicing attorney for the past thirteen years.

I remember the killing of U. T. Saul and certain Mexicans on October 6, 1895. Was requested by Justice Durham to assist at the examining trial held subsequent to the killing, as acting district attorney, the district attorney being absent at the time.

I examined the several witnesses at such trial. Florentino Suaste was committed without bail. The women were remanded under a bond. I do not remember the amount of the bond.

W. J. BOWEN.

Statement made and subscribed before me, September 1, 1897.

JOSEPH G. DONNELLY,  
*United States Consul-General.*

## EXHIBIT 10.

*Statement of Charles Louis Underwood, of Cotulla, Lasalle County, Tex., September 1, 1897.*

I was born in Texas thirty-three years ago and have been in Lasalle County for about twelve years. I was appointed jailer of Lasalle County jail in August, 1893. I was jailer of that jail in October, 1895, during the trouble in which a certain Mexican was taken from the jail and lynched. Suaste, the Mexican, and the Mexican women and children were delivered into my custody on October 7, 1895. I treated them in the same way as I did other prisoners and saw that the wounded got proper care and attention. I knew there was a good deal of excitement over the killing of Saul—he was a very popular man—and heard that there was some talk of lynching.

Some said Suaste ought to be hung. After a few days things seemed to quiet down; about a week or so. There seemed to be no excitement. I was in the jail on the night of the lynching. There was no one else to guard the jail—no deputy or ranger. About 12 o'clock that night I heard some one shaking at the door. I got up and looked out of the window; I saw about three or four men at the door. I asked, "Who is there?" They answered, "Rangers." I came down barefooted and unlocked the door. It did not occur to me they were lynchers. As soon as I opened the door I saw the party were masked; I knew at once they were lynchers. I said, "My God, men, let the law take its course." They seized me and forced the keys from me. I said to them, "Now, you have the keys, but open the doors." They did not talk except in low tones and by motions. They tried to open the cell door themselves, and couldn't. They then put the keys in my hands and made motions with their pistols. They forced me to open the door. I myself opened the door. They found Suaste at once. They pushed me ahead, so I could not see them take him. They took him out. They told me to say nothing or I would be served the same way. I made no outcry, but waited until morning. I told Swink next morning; he was the first man I met.

C. L. UNDERWOOD.

Statement made and subscribed before me September 1, 1897.

JOSEPH G. DONNELLY,  
United States Consul-General.

## EXHIBIT 11.

THE STATE OF TEXAS, *County of Lasalle.*

*Testimony taken before the undersigned, a justice of the peace in and for Lasalle County, at an inquest held over the dead body of Florentino Suaste on this the 14th day of October, 1895.*

LEWIS UNDERWOOD, being duly sworn, says:

On the night of the 11th of October, 1895, about 12 o'clock at night, in the town of Cotulla, in Lasalle County, about three or four men came to the jail door and knocked and shook the door.

I asked who was there. They said rangers, and wanted in. I lit my lantern and came down. When I opened the door I was grabbed by two men, one by each arm. I told them they had deceived me. They said in a whisper they wanted to treat me nicely. I only heard the sound of two voices, so low that I could not possibly recognize either voice. There was no more talking; they would only motion toward the jail door. We scuffled from the front door to the jail door. They were trying to take the keys from me, and the man on my right did wring them out of my hand. I told them I would not open any door. They took my hand and pushed it to the lock, and they made me unlock the door; they pushed me ahead in the cell. As near as I can come to the number of men was about six or eight, entered the cell, took the man out, and I saw no more of him until next day when lying at the courthouse dead.

C. L. UNDERWOOD.

THE STATE OF TEXAS, *County of Lasalle.*

This is to certify that upon an inquest held upon the dead body of Florentino Suaste, held by the undersigned, a justice of the peace in and for Lasalle County, Tex., and after examining into the cause, time, manner, and place of the death of the deceased, I find as follows:

First. That the name of the deceased is Florentino Suaste.

Second. That deceased was a male person about 40 years old.

Third. That deceased came to his death near the Nueces River, about one-half mile from the town of Cotulla, on the 12th day of October, about 12.30 a. m.

That the death of deceased was caused by his being hung and shot by persons unknown.

Witness my signature this 14th day October, 1895.

M. T. DUNHAM,

*Justice of the Peace, Lasalle County, Tex.*

THE STATE OF TEXAS, *County of Lasalle.*

I, G. H. KNAGGS, of the district court in and for said county, do hereby certify that the foregoing is a true and correct copy of the proceedings and testimony taken at an inquest held upon the dead body of Florentino Suaste before M. T. Dunham, justice of the peace, precinct No. 1, Lasalle County, Tex., October 14, 1895, as the same appears on file in my office.

Given under my hand and the seal of said court at office in Cotulla this 31st day of August, 1897.

[SEAL.]

G. H. KNAGGS,

*Clerk District Court, Lasalle County, Tex.*

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EXHIBIT 11½.

[Telegrams.]

SEPTEMBER 9.

Hon. GEO. S. KNAGGS,  
*Cotulla, Tex.:*

If possible, mail copy to-day. Expected it Tuesday. Wire immediately estimate folios.

DONNELLY, *Consul-General.*

SEPTEMBER 10, 1897.

Will mail copy to-day.

G. H. KNAGGS.

SEPTEMBER 10, 1897.

G. H. KNAGGS,  
*Cotulla, Tex.:*

Was anything done in matter by grand jury November term, 1895? If so, mail copy. Answer.

DONNELLY, *Consul-General.*

SEPTEMBER 11, 1897.

JOS. G. DONNELLY,  
*Consul-General, Laredo:*

Nothing done by grand jury November term, 1895. Letter by mail.

KNAGGS.

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OFFICE OF COUNTY AND DISTRICT CLERK,  
LASALLE COUNTY, TEX.,  
*Cotulla, Tex., September 10, 1897.*

MY DEAR SIR: I have made a thorough search for the papers containing proceedings in the examining trial, but failed to find them. Hence the delay in sending copies of the testimony taken before the grand jury.

You will please find inclosed the testimony of the three witnesses, which comprise all that I find in the sealed papers before the grand jury. Also find duplicate receipts for my costs in making said copies. Trusting that you have not been inconvenienced by the delay,

Yours, truly,

G. H. KNAGGS.

Hon. J. G. DONNELLY,  
*Consul-General.*

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## EXHIBIT 12.

OFFICE OF COUNTY AND DISTRICT CLERK,  
LASALLE COUNTY, TEX.,  
*Cotulla, Tex., September 10, 1897.*

MY DEAR SIR: I find that the children of Suaste were in jail with their parents, but not held by any process of law, but as an act of charity. The women were released during the November term, 1895, of our district court, as the grand jury did not find evidence sufficient to find an indictment against them for killing Saul.

Yours, truly,

KNAGGS.

## EXHIBIT 13.

OFFICE OF COUNTY AND DISTRICT CLERK,  
LASALLE COUNTY, TEX.,  
*Cotulla, Tex., September 11, 1897.*

DEAR SIR: Since writing you on yesterday I have learned that there had been certified copies of the proceedings in the examining trial made by Mr. P. D. Hickey (clerk of the court at that time) for N. A. Swink. Mr. Swink says that if you wish he will go to S. A. and have copies of the proceedings made for you from the certified copies which he holds. It does not appear from the records of the proceedings of the court for the November term, 1895, that anything was done at that term toward the investigation of the Suaste case. I find among the papers returned by the grand jury of the November term, 1895, the following:

*The honorable district court, Lasalle County, Tex.:*

We, the grand jury, after duly investigating the cases against Nicolasa Baptista and Casimira Reyes, for the murder of U. T. Saul, find evidence not sufficient to find an indictment, therefore ask that they be released.

J. A. LANDRUM, *Foreman.*

Wire me should you want the copies made from the certified copies held by Mr. Swink.

Yours, truly,  
Hon. J. G. DONNELLY,  
*Consul-General.*

G. H. KNAGGS.

## EXHIBIT 14.

## VERBAL STATEMENT OF CASIMIRA REYES.

I am the wife of Juan Montelongo, who was killed October 6, in Lasalle County, Tex. I was with him when he was killed. We, my husband and I, joined with Florentino Suaste and his family for a hunting trip. That was a few days before. We were very hungry that day. My husband went out to shoot something. He found a calf on the road and killed it. We did not know whose calf it was. We expected to find the owner and work out the value of the calf or pay for it some way. We did not find the owner that day. My husband killed the calf for food for us.

That same night, about 9 o'clock, two Americans rode up to us. We were just getting ready to camp for the night and the men were unhitching the horses. The children were in the wagon of Suaste. One of the men who rode up—he was a small man with light hair—asked “How many men are there here?” We said, “Two.” He then began shooting, and shot my husband. This man was the small man—El Colorado. The other, a large man, began to shoot also. He shot Suaste, and both kept shooting. Suaste got his gun at last, and fired and shot the large man. My husband and Suaste said nothing to the Americans. The Americans shot without warning; they killed my husband and little Pedro, the child, and shot Suaste and Nicholasa. When the big man fell, Colorado dragged him away. We just sat then and cried until some men came. These took us to jail the next day. A few nights afterwards I heard a low tap at the jail door. Then I heard the jailer get up and go softly downstairs. Then I heard whispering, and I saw men coming in. The jailer opened the door for them. He opened Suaste's cell for them. They took Suaste out, and in a minute I heard shots.

One of the men was old and very stout. I could tell him if I saw him again. The jailer's wife told afterwards she knew some of the men. They shot Suaste first and then hung him. Suaste was brought back to the jail dead. They kept us in jail for about a month and then let us out.

CONSULATE-GENERAL, UNITED STATES,  
Nuevo Laredo, Mexico:

I hereby certify that the foregoing is a translation of statement voluntarily made to me in the Spanish language by Casimira Reyes at San Antonio, Tex., August 26, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

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EXHIBIT 15.

Casimira Reyes de Montelongo v. N. A. Swink. No. 604. In the circuit court of the United States in and for the western district of Texas.

Hon. T. S. MAXEY,  
*Judge of said Court:*

Now comes Casimira Reyes de Montelongo, and complaining of N. A. Swink, makes known to your honor:

First. That the complainant herein, Casimira Reyes de Montelongo, is a widow and is a citizen of the Republic of Mexico temporarily residing in the city of San Antonio, county of Bexar, and State of Texas; that her deceased husband, Juan Montelongo, was born and raised in the Republic of Mexico, and continued to be a citizen of said Republic up to and including the time of his death.

Second. That the said N. A. Swink is a resident and citizen of the State of Texas and county of Lasalle.

Third. That heretofore, to wit, on or about the 6th day of October, A. D. 1895, this complainant and her husband, Juan Montelongo, while in the company of Florentino Suaste and his family, traveling through the country and camping on a public road at or near the town of Twohig, in the county of Lasalle, were, without provocation, cause, or authority, assaulted by ——— Saul and the said N. A. Swink, which said assault resulted in the death, by gunshot wounds, of the said Juan Montelongo, and that said gunshot wounds were inflicted at the hands of the said ——— Saul and the said N. A. Swink without cause and in defiance of law and with the intent of depriving the said Juan Montelongo of his life.

Fourth. That the said Juan Montelongo was killed, as aforesaid, by the said Swink and the said ——— Saul, without provocation, without warrant of law, and in defiance of the rights of the said Juan Montelongo and this complainant, and while they were temporarily camping on the side of a public road in the county of Lasalle, in journey through the State of Texas to the Republic of Mexico.

Fifth. That the said Juan Montelongo, the husband of this complainant, a working man sound of body and mind and fully capable of and did support this complainant.

Sixth. That this complainant alleges that by reason of the wrongful acts of the said N. A. Swink in killing the said Juan Montelongo in the manner hereinbefore alleged, thereby depriving this complainant of the support, protection, and affection of the said Juan Montelongo, she has been greatly damaged as follows:

That the said Juan Montelongo, as hereinbefore alleged, was fully able to support this complainant, and was at the time of his death supporting her; that he was about the age of 35 years, and had a reasonable expectation of living until he reached the age of 60 years; that he was earning and could earn as a laborer the sum of thirty (\$30) dollars a month; by reason of all which this complainant alleges that she has been actually damaged in the sum of five thousand (\$5,000) dollars.

Seventh. She further alleges that by reason of the malicious and willful act of the said N. A. Swink and the said ——— Saul in depriving the said Juan Montelongo of his life and in depriving this complainant of the support, protection, and the affection of the said Juan Montelongo, and by reason of the total disregard of the said N. A. Swink of the rights of this complainant, and by reason of the manner in which the said Juan Montelongo was deprived of his life by the said N. A. Swink, this complainant is entitled to recover exemplary damages, and here now alleges said damage to be the sum of twenty thousand (\$20,000) dollars.

Wherefore this complainant prays that citation issue to the above-named party, N. A. Swink, requiring him to appear and answer herein, that judgment be rendered

in her favor for the sum of five thousand (\$5,000) dollars actual and twenty thousand (\$20,000) dollars exemplary damages, and for all costs of suit in this behalf expended, and for general relief.

MCLEARY & STAYTON,  
*Attorneys for Plaintiff.*

(Endorsed:) In the circuit court of the United States in and for the western district of Texas, at San Antonio, No. 604, Casimira R. de Montelongo *v.* N. A. Swink. Damages, petition. Filed this 3d day of October, 1896. D. H. Hart, clerk, by A. Grosenbacher, deputy.

UNITED STATES OF AMERICA,  
*Western District of Texas.*

I, D. H. Hart, clerk of the district court of the United States in and for the western district of Texas, hereby certify that the above and foregoing on one page and a fraction of a page contains a true and correct copy of plaintiff's petition in cause No. 604, Casimira Reyes de Montelongo *v.* N. A. Swink, as the same appears on file in this office.

Witness my hand and the seal of the circuit court, at office in the city of San Antonio, Tex., this the 26th day of August, A. D. 1897.

[SEAL.]

D. H. HART, *Clerk,*  
By A. GROSENBACHER, *Deputy.*

#### EXHIBIT 16.

*Statement of M. J. Barlow, Cotulla, Lasalle County, Tex., September 1, 1897.*

I am an American citizen, aged 53 years. Have resided in Lasalle County, at Cotulla, fifteen years. My business is banking and dry goods.

I know N. A. Swink, who was deputy sheriff in October, 1895. I have known him about twelve years. I regard him as an honest and law-abiding citizen; believe he made a good record as deputy sheriff and was a faithful, discreet, and capable officer.

I knew U. T. Saul, who was killed in October, 1895; knew him for many years and did business with him. He was a man universally respected as an upright and good citizen. He was not an impetuous or quarrelsome man; on the contrary, very conservative, careful, and conscientious. He was particularly indisposed to any trouble or violence. That was his well-known reputation. He was certainly not such a man as would open up fire on a party of women and children unless his life were endangered, as I believe to have been the case. He was known as a very amiable, peaceable man. His murder provoked public feeling. He left surviving a wife and four children.

M. J. BARLOW.

Statement made and subscribed before me September 1, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

#### EXHIBIT 17.

CONSULATE-GENERAL, UNITED STATES,  
*Nuevo Laredo, Mexico.*

ANTONIO MAGNON, being duly sworn, deposes and says:

I am an American citizen, resident in Webb County, Tex., where I have lived for the past twenty-eight years.

I know Nicolasa Bautista, who was in the shooting affray near Cotulla, in Lasalle County, Tex., in October, 1895, wherein Juan Montelongo and her child, Pedro Suaste, was killed.

I first met her at Devine, Tex., early in January of this year. About a month afterwards she visited my house in Laredo. While at my house she talked in my presence of the shooting and lynching. She stated that she had told the Mexican consul she was married to Florentino Suaste because she was afraid it might injure her to say otherwise. But Ornelas, she said, claimed that the records of the place she named, San Felipe, in the State of Guanajuato, did not show her marriage.

Then she admitted she had never been married to Florentino, but had lived with him for years as his wife. She made the same admission to me and before my wife and brother-in-law, that she was never married to Suaste.

She also stated to me, and in the presence of my wife and brother-in-law, that Suaste had been a Mexican soldier in the Eighth Battalion, commanded by Gen. Ignatius Bravo; that she induced him to desert at San Blas, Mexico, and he did so, they making their escape together to the United States about seven years before the lynching.

I had occasion afterwards to visit Mexico. About February 13, this year, I was at San Felipe, where this woman had represented herself as having been married. I am interested in a mine near there. I met the civil judge of the town at his office and made inquiry of him as to the marriage of Nicolasa to Suaste. There was no record of such a marriage, and the judge, Ignacio Ramirez, told me that the same inquiry had been made by the Mexican Government with a request to send on a certificate thereof. The judge said he had informed the Government that no such record was there.

I found out at San Felipe that Florentino Suaste formerly lived there, but had years before got into the army and was at one time in the Eighth Battalion.

The records examined by me in the office of Judge Ramirez ran from 1866 to 1893, which last date was subsequent to Suaste and Nicolasa coming to the United States.

At the last term of court in San Antonio Nicolasa was indicted and tried for selling liquor without a United States license. The case against her was dismissed.

She now lives at Devine, Tex., where she goes by the nickname of Anna, La Mescalena or Mescal Anna, as she is supposed to make her living by selling mescal.

ANTONIO MAGNON.

Subscribed and sworn to before me this 3d day of September, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

#### EXHIBIT 18.

Nicolasa Batista de Suaste et al. v. Andrew Armstrong et al. No. 603. In the circuit court of the United States in and for the western district of Texas.

Hon. T. S. MAXEY,  
*Judge of said court.*

Now come Nicolasa Batista de Suaste, Concepcion Suaste, Paula Suaste, Mauricia Suaste, Alejandra Suaste, and Florentino Suaste and, complaining of Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, make known to your honor:

First. That Nicolasa Bautista de Suaste is a widow and that the other complainants herein are the children of said Nicolasa Bautista de Suaste and her husband, Florentino Suaste, and are minors appearing herein through their natural guardian and next friend, the said Nicolasa Bautista de Suaste.

Second. That all of these complainants are citizens of the Republic of Mexico, temporarily residing in the city of San Antonio, county of Bexar and State of Texas; that the deceased husband and father, Florentino Suaste, was born and raised in said Republic of Mexico and continued to be a citizen of said Republic up to and including the time of his death.

Third. That the said Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood are each and all residents and citizens of the State of Texas, county of Lasalle.

Fourth. That heretofore, to-wit, on or about the 10th day of October, A. D. 1895, the said Florentino Suaste and the said Nicolasa Bautista de Suaste, his wife, together with the minors hereinbefore named, their children, were arrested by the authorities of Lasalle County, Tex., and were by them incarcerated in the county jail of said county, under the charge of murder.

Fifth. That while so incarcerated and without power of self-protection, on or about said date, the said Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood organized a mob contrary to the laws of the land and for the purpose of killing the said Florentino Suaste.

Sixth. That in pursuance of said design and purpose, and in conformity with a conspiracy previously formed for such purpose between said parties and others, to these complainants unknown, the said Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, his associates, entered the county jail of Lasalle County, and entered the cell of said jail wherein these com-

plainants and Florentino Suaste were confined, and took therefrom the said Florentino Suaste, and violently dragged him from said jail and from his said family, and killed him by shooting and hanging without right, contrary to the law, and with the intent to deprive said Florentino Suaste of his life.

Seventh. That the said Florentino Suaste, the husband and father of these complainants, was a workman, sound of body and mind, and fully capable of and did support these complainants.

Eighth. Complainant, Nicolasa Batista de Suaste, in her own right alleges that by reason of the wrongful act of the said Andrew Armstrong, sr., and his associates, Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, in killing the said Florentino Suaste, as hereinbefore alleged, and in thus depriving the complainant of the support, protection, and affection of the said Florentino Suaste, deprived her of his companionship, protection, and support, to her damage as follows:

That the said Florentino Suaste was, as hereinbefore alleged, fully able to support this complainant and his family, and that he was about thirty-nine (39) years of age, and had a reasonable expectation of living until he reached the age of sixty (60) years, and that he was earning and could earn as a laborer the sum of thirty (\$30) dollars a month, by reason of all which the said Nicolasa Batista de Suaste alleges that she has been actually damaged in the sum of five thousand (\$5,000) dollars.

Ninth. She further alleges that by reason of a malicious and willful act of said Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, his said associates, in depriving the said Florentino Suaste of his life and in depriving this complainant of the support, protection, and affection of the said Florentino Suaste, and by reason of the total disregard of the said Andrew Armstrong, sr., and his said associates of the rights of this complainant, and by reason of the manner in which the said Florentino Suaste was deprived of his life by the said Andrew Armstrong, sr., Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, this complainant is entitled to recover exemplary damages, and here now alleges said damages to be the sum of twenty thousand (\$20,000) dollars.

Tenth. And further, the said Nicolasa Batista de Suaste, as the natural guardian and next friend of the said minor children, and on the behalf of Concepcion Suaste, Paula Suaste, Maurica Suaste, Alrijandra Suaste, and Florentino Suaste, alleges that by reason of the acts of said Andrew Armstrong, sr., and his associates, as hereinbefore named, by which said minors were deprived of the support, protection, and affection of their said father, Florentino Suaste, which they would have continued to have enjoyed during his lifetime, they were damaged in actual damage in the sum of ten thousand (\$10,000) dollars.

And further, that by reason of the malicious and willful act of said Andrew Armstrong, sr., and Andrew Armstrong, jr., W. L. Hargus, N. A. Swink, and Louis Underwood, his associates, by which the said Florentino Suaste was deprived of his life and the said minors were deprived of the support, protection, and affection of their said father, and by reason of the total disregard of the rights of these minors by the said Andrew Armstrong, sr., and his said associates, and by reason of the manner in which the said Florentino Suaste was deprived of his life by the said Andrew Armstrong, sr., and his said associates, these minors are entitled to recover exemplary damages of and from the said Andrew Armstrong, sr., and his said associates, and here now allege the said damage to be the sum of twenty thousand (\$20,000) dollars.

Wherefore these complainants pray that citation issue to each of the above-named parties, requiring them to appear and answer herein, and that judgment be rendered in favor of Nicolasa Batista de Suaste in her own right in the sum of five thousand (\$5,000) dollars actual damages and twenty thousand (\$20,000) dollars exemplary damages, and that judgment be rendered herein in favor of said Nicolasa Batista de Suaste as the natural guardian and next friend of the said minors in the sum of ten thousand (\$10,000) dollars actual damages and twenty thousand (\$20,000) dollars exemplary damages, and for all costs of suit in this behalf expended and for general relief.

MCLEARY & STAYTON,  
*Attorneys for Plaintiff.*

(Indorsed:) No. 603. In the circuit court of the United States in and for the western district of Texas, at San Antonio. Nicolasa B. de Suaste et al. v. Andrew Armstrong, sr., et al. Damages. Petition. Filed this 3d day of October, 1896.

D. H. HART, *Clerk.*  
By A. GROSENBACHER, *Deputy.*

UNITED STATES OF AMERICA,  
*Western District of Texas:*

I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, hereby certify that the above and foregoing on one page and a frac-

tion of a page contains a true and correct copy of plaintiff's petition in cause No. 603, Nicolasa B. de Suaste et al. v. Andrew Armstrong, sr., et al., as the same appears on file in this office.

Witness my hand and the seal of the circuit court, at office, in the city of San Antonio, Tex., this 26th day of August, A. D. 1897.

[SEAL.]

D. H. HART, *Clerk.*  
By A. GROSENBACHER, *Deputy.*

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EXHIBIT 19.

**THE STATE OF TEXAS, County of Lasalle:**

I, George H. Knaggs, clerk of the district court in and for Lasalle County, Tex., do hereby certify that at the November term of the district court, 1895, of Lasalle County, Tex., the following-named citizens of Lasalle County were duly impaneled, sworn, and charged to inquire into and true presentment make of all offenses against the penal laws of the State aforesaid committed within the body of the county aforesaid:

J. A. Landrum, foreman; G. Philipe, J. F. Hillard, B. Wildenthall, J. M. Ramsey, E. Lesterjett, R. E. Chew, W. M. McCarthy, Tim Conlin, T. J. Buckley, and J. W. Baylor.

I further certify that the twelve named citizens of Lasalle County aforesaid composed the grand jury at the November term, 1895, of the district court, and that I am personally acquainted with each of the aforesaid parties and can testify to their moral worth and great integrity of character, and know that they, and each of them, are truthful, honorable, and law-abiding citizens and believe in the rigid enforcement of the law. The testimony taken before the said grand jury is now in my possession, but under seal.

I further certify that the mobbing of Florentino Suaste by unknown parties on the 12th day of October, 1895, was investigated by the aforesaid grand jury, and every effort made to ascertain who the guilty parties were and to bring them to justice.

Given under my hand and the seal of the district court of Lasalle County, Tex., at office in Cotulla, this the 1st day of September, 1897.

[SEAL.]

G. H. KNAGGS,  
*Clerk District Court, Lasalle County, Tex.*

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EXHIBIT 20.

*Verbal statement of J. G. Smith, editor of newspaper at Cotulla.*

I am an American citizen and have lived most of my life in Cotulla. I am, and for nearly ten years have been, editor of the Lasalle County Isonomy, a paper published here. I remember well the killing and lynching affair in October, 1895. I have always believed the affair was not fully investigated by the grand jury or by the local authorities. There may be doubt about the shooting, although it seems strange that two Americans, to effect the arrest of two Mexicans, one an aged man, should have found it necessary to kill the old man and a child and shoot down the other man and his wife. But as to the lynching, there is no doubt that the jail ought to have been guarded. It is admitted by our best citizens that it was wrong to leave the jail in the sole care of a jailer.

He was at the time almost half-witted. Captain Brooks is a good man, but he may have been busy or imposed upon. Sheriff Hargus—well, I won't say about him. He knew better than to leave the jail unguarded. He is now sued for being a participant in the lynching.

I won't say that I know any of the three or four men who did the lynching. I will say that the names can be found out by reasonable legal means. It is not possible that a man could be taken from that jail in the middle of the town by so many and shot and hanged without their leaving some traces. I am free to say that justice has not been done. It is the third lynching in this town from that same jail, but no lyncher has ever suffered. No lyncher need fear to suffer if the same methods are followed by the authorities for getting at the truth and enforcing the law. Why, one of the members of the grand jury that investigated the lynching, T. J. Buckley, had an altercation on the street afterwards with Sheriff Hargus and openly accused the sheriff of having been in collusion with the lynchers. It is hard to get people to talk

in the matter, particularly if you are a stranger. No one wants to get into trouble. But if the authorities had acted honestly and energetically the truth would have come out.

CONSULATE-GENERAL, UNITED STATES,  
*Nuevo Laredo, Mexico.*

I hereby certify that the foregoing statement of J. G. Smith was voluntarily made before me at Cotulla, Lasalle County, Tex., on the 1st day of September, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

EXHIBIT 21.

*Statement of F. E. Thompson, deputy collector of customs, Laredo, Tex.*

I lived in Cotulla in 1886. Was a practicing lawyer there. I remember a lynching that occurred there then. It took place at 11 o'clock in the forenoon. Several hundred citizens came marching up the street, the rest of the town looking on, and in spite of speeches made by myself and others the jail was entered and the prisoner taken and hanged within sight of the court-house.

The participants are well known. I remember one particularly, an old man who carried the rope. He now holds an important county office.

Was anyone ever indicted?

Well, I don't think so. I know no one was ever punished.

CONSULATE GENERAL, UNITED STATES,  
*Nuevo Laredo, Mexico:*

The foregoing statement of F. E. Thompson was voluntarily made to me at Nuevo Laredo, Mexico, this 5th day of September, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

*Statement of Casimera Reyes, made under oath before the grand jury of Lasalle County, May 13, 1896.*

I now live in S. A.; have been living there two months. I came from Laredo, Tex., there. I was in the jail at the time the man Florentino Suaste was taken out—about 1 o'clock in the morning in the month of October, 1895. There was three men and the jailer that came in the jail. The jailer opened the door and the men came in and grabbed him and took him out. I knew the jailer, because he had a lamp in his hand and I heard him come downstairs.

I do not know who the other three men were. I did not see anything on their faces. I heard the jailer's footstep as he came down the steps. The jailer was opening the front door when I saw him first. I would not know any of the men if I should see them again. After the men had taken Florentino out, his wife commenced to cry and asked the jailer what they had done with her husband. He told her he did not know and for her to shut her mouth. After he told her that he shut the doors and went upstairs. I did not see any firearms on these men. The next time I saw Florentino, he was dead inside the jail.

her  
CASIMERA X REYES,  
mark.

Witness:

J. W. McINNES, *Foreman Grand Jury.*

THE STATE OF TEXAS, *County of Lasalle:*

I, G. H. Knaggs, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and correct copy of the evidence of Casimera Reyes, taken before the grand jury at the May term of said court at Cotulla, Tex., as the same appears on file in my office.

Witness my hand and the seal of the district court of said county, at office in Cotulla, Tex., this 10th day of September, A. D. 1897.

[SEAL.]

G. H. KNAGGS,  
*Clerk District Court, Lasalle County, Tex.*

*Statement of Nicolasa Baptista, made under oath before the grand jury at the May term of court, 1896, Cotulla, Lasalle County, Tex.*

I live in San Antonio, Tex.; have been there since January, 1896. I used to live in Monterey, Mexico. I went from Monterey, Mexico, to S. A. I was in jail at Cotulla at the time my husband was taken out, about 12 o'clock at night. I think it was in October, 1895. I don't know how many men went into the jail at the time my husband was taken out, as there was very little light and the men were stooped over. The jailer opened the door. I heard someone come on horseback outside, and I was so scared I do not know how many men came into the jail. The men outside knocked on the door, when the jailer came down the stairs with a lamp in his hand and opened the outside door. The jailer had no shoes on. I do not know any of the men that came into the jail. I was sick, and there was very little light in the jail at the time when they came in, and I would not know any of the men again if I should see them. They did not have any masks on.

The first pull they gave my husband he hit his head against the door. I got out of my bed and went to where my husband was, when one of the men took out a pistol and placed it against my breast and told me not to move any more. He spoke in Spanish. He was a small man, rather fat, with gray hairs on his head, and gray whiskers. This man did not have any mask on. I have not seen this man since that time. When they went out with my husband the jailer walked along behind, and left the doors open. Then he came back and closed the door where I was. While he was closing the door I asked him where my husband was, and he said he did not know and for me to shut my mouth. The next time I saw my husband he was dead in the jail. The jailer told me the next morning about daylight that my husband was dead.

The next morning the jailer's wife was cleaning up the blood where my husband was pulled along, when I asked where my husband was, and the jailer said he was dead, but he did not know where he was. The jailer asked me if I knew any that went in there, and I told him I did not know any of them.

The jailer told me he knew one of them, but for me to shut my mouth and not to say anything. The jailer walked along in front of the men when they came into the jail. They did not push him; they did not talk at all, only when the man put the pistol against me.

her  
NICOLAS - BAPTISTA,  
mark

Witness:

J. W. McINNES, *Foreman Grand Jury.*

THE STATE OF TEXAS, *County of Lasalle:*

I, G. H. Knaggs, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and correct copy of the testimony of Nicolosa Baptista taken before the grand jury at the May term of said court at Cotulla, Tex., as the same appears on file in my office.

Witness my hand and the seal of the district court of said county at office in Cotulla, Tex., this 10th day of September, A. D. 1897.

[SEAL.]

G. H. KNAGGS,  
*Clerk District Court, Lasalle County, Tex.*

#### EXHIBIT 22.

*Testimony of Louis Underwood, taken under oath before the grand jury May 17, 1896, at Cotulla, Lasalle County, Tex.*

I was jailer in Cotulla October, 1895. I was in the jail when some men took out a Mexican, Florentino Suaste. About 12 o'clock at night they knocked or struck the outside door. I came down from upstairs in my bare feet and unlocked the door. One man stepped inside with a mask or cloth on his face. I said, "My God, man, this will never do." Then there was two or three crowded in; one took me by the right arm. I tried to get loose, and in the scuffle I was pushed to the inside jail door. I then put one foot against the man who held my right hand in which the jail keys were and pushed him back against the stair steps. The man I pushed down jumped up, grabbed my hand again and wrenched the keys from me. I then said, "You have got the keys; I won't open any doors." Then one of the men patted me on the head

and said in a low, broken voice, "We want to treat you nice." They then put the keys back in my hand and pointed to the lock on the jail door. I then put the key in the lock and turned the lock. The men then pushed open the door. They then shoved me ahead of them into the jail to the cell door. I unlocked that door. They opened it and pushed me inside in front of them and shoved me beyond the cell the Mexican was in. In two or three minutes they had the Mexican out of the cell and out of the jail. I then started to the front door, when one of the men stepped up in the front door and told me if I came out I would be done likewise. That was the last I saw of him until the next morning, when he was brought to the jail dead.

The men were all masked that I saw. I could not identify any of them. I did not tell either of the women that I knew one of them. I did not have any conversation with the Mexican woman about the man being taken out. I did not leave the jail that night, and did not tell anyone until the next morning.

It is nothing unusual for me to be called up at all hours of the night by rangers and deputy sheriff to admit prisoners. They—the mob—kept me between them and the women all the time.

C. L. UNDERWOOD.

Witness:

J. W. McINNES,

*Foreman Grand Jury.*

STATE OF TEXAS, *County of Lasalle:*

I, G. H. Knaggs, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and correct copy of the testimony of Louis Underwood taken before the grand jury at the May term of said court at Cotulla, Tex., as the same appears on file in my office.

Witness my hand and the seal of the district court of said county at office in Cotulla, Tex., this 10th day of September, A. D. 1897.

[SEAL.]

G. H. KNAGGS,

*Clerk District Court, Lasalle County, Tex.*

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EXHIBIT 23.

*Verbal statement of C. A. Daviess, district attorney for Lasalle County, made to Consul-General Donnelly at San Antonio, Tex., August 26, 1897.*

I am the present district attorney for Lasalle County, Tex. I was recently requested by the Government to make a report for the Department of State relative to the killing of certain Mexicans and lynching in Lasalle County in October, 1895.

I had no official connection with the affair, not being in office at that time. My report, therefore, was made largely on hearsay and such records as I could get. I did not get at the records of the grand jury or the examining trial. I was told that the record of the examining trial and the proceedings of the grand jury were not to be found, and that they had probably been destroyed by the burning of the courthouse, which occurred shortly before.

CONSULATE-GENERAL, UNITED STATES,

*Nuevo Laredo, Mexico:*

I certify that the above statement was made to me by C. A. Daviess, district attorney for Lasalle County, Tex., at San Antonio, Tex., on the 26th day of August, 1897.

JOSEPH G. DONNELLY,  
*Consul-General.*

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EXHIBIT 24.

*Verbal statement of James A. Walton, former district attorney for Lasalle County, Tex.*

I was district attorney for Lasalle County, Tex., in October, 1895. I remember the killing of certain Mexicans near Cotulla, in said county, and also the lynching of Florentino Suaste.

I was not present at any of the inquests or at the examining trial. I was in Cotulla when the grand jury met which considered the said killing and lynching, but court

was in session at that time and I gave the proceedings of the grand jury little attention. I have no recollection of the nature of the testimony produced before the grand jury. I know there were no indictments.

CONSULATE-GENERAL, UNITED STATES,  
Nuevo Laredo, Mexico.

I certify that the above statement was made to me by James A. Walton, former district attorney for La Salle County, Tex., at San Antonio, on the 26th day of August, 1897.

JOSEPH G. DONNELLY, *Consul-General.*

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EXHIBIT 25.

SAN ANTONIO, TEX., *January 28, 1896.*

*Statement of Miss Suaste.*

Tell her I want her to tell me all she knows of this matter.

Q. Do you remember the time these people came and killed the men near Cotulla?—

A. Yes, sir.

Q. Where were you at the time and what doing?—A. We were unhitching the horses at the time.

Q. Who was in the party?—A. My father and mother and all the children.

Q. And others?—A. Another man and his wife.

Q. What did the people that came up do?—A. They all came up and asked how many men were in the crowd, and the father answered that there were two. As soon as he said that the other American caught hold of the father and put him in front of the other man, who commenced to shoot at him. After he shot at the father a good many times, the American grabbed the other Mexican and said, "Here is another," and killed him. They then went to the wagon and commenced shooting into it when the mother halloed to them not to shoot any more. They then shot the mother.

Q. When was the child shot?—A. At the same time the others were.

Q. Was the father shot?—A. Yes.

Q. How many times was he hit?—A. Four times—in the back, breast, side, and in the arm.

Q. That did not kill him?—A. No.

Q. How many Americans were in that crowd?—A. Two.

Q. Did any of them get killed?—A. The father killed one after he shot him.

Q. How many did he kill?—A. One; then Swink picked Saul up and carried him off.

Q. Then what did Swink do? Is he not the deputy?—A. He went off to get the judge, I guess; he went toward Cotulla.

Q. What did your folks do?—A. We all just stayed there crying.

Q. Did the Americans come back then?—A. Do not know, as they all went toward the road to get assistance. The mother, hearing two other shots fired, said they had better go back—they might kill all the rest of the family.

Q. Did you go back, too?—A. Yes.

Q. Who had fired the shots?—A. Saul; to try to attract attention.

Q. What happened then?—A. They came and took them all to jail.

Q. How long was it afterwards until they took you to jail?—A. The next day.

Q. How long before they took your father, after you were in jail?—A. Four days.

Q. What time in the night was it?—A. Twelve o'clock.

Q. How many were in the crowd?—A. She does not know; she just saw them in the dark.

Q. Were there many?—A. Yes.

Q. Did you know any of them?—A. Yes; one—Armstrong.

Q. What kind of a looking man was he, and how did you know him?—A. He was a heavy man; I mean a heavy-set man.

Q. What color hair did he have?—A. White.

Q. Was he an old or young man?—A. Not very old, with red beard.

Q. Did you know Armstrong before that?—A. She used to go out begging, and saw him several times then.

Q. You knew him by sight?—A. Yes.

Q. Was he the only one you remember that night?—A. Yes.

Q. What did the sheriff do to keep the people from taking your father?—A. The sheriff told them that the father was in Encinal, at his home.

Q. What did the jailer do?—A. They came and knocked on the door, and the jailer came down with the lamp and opened it.

Q. Did he open the door for them?—A. He just opened the door and let them in.

Q. What did they do then?—A. They just took the father out. One took him by the leg and another by the arm, and drug him out of the jail.

Q. Was he able to walk?—A. Yes.

Q. Did you see him when they hung him, or did they take him off?—A. They took him off.

Q. You heard them shoot?—A. Yes.

Q. How long was it before they killed him?—A. They killed him at once, as soon as they took him out, and then threw a rope around his neck and drug him off.

Q. Did they kill him on the ground?—A. Yes; and then hung him to the mesquite tree.

Q. About what time was this?—A. Twelve o'clock at night.

Q. What day was it?—A. Friday, the 11th day of October, 1895.

CONSULATE-GENERAL, UNITED STATES,

*Nuevo Laredo, Mexico:*

I certify that the foregoing statement was voluntarily given me by Hon. J. S. McLeary, attorney for Nicolasa Bautista and Casimira Reyes, who declared it was made before him.

JOSEPH G. DONNELLY, *Consul-General.*

*Mr. Day to Mr. Romero.*

No. 318.]

DEPARTMENT OF STATE,  
*Washington, February 21, 1898.*

SIR: I have the honor to state for your information that, as you were advised in the Department's note of August 19, 1897, Mr. Joseph G. Donnelly, consul-general of the United States at Nuevo Laredo, was detailed as a special agent of this Government to make a thorough investigation of the killing of Juan Montelongo and Pedro Suaste, the wounding of Nicolasa Bautista and the imprisonment of her minor children and Montelongo's wife, as well as the lynching of Florentino Suaste, in Lasalle County, Tex.

The Department has received the report of Consul-General Donnelly, who seems to have made an exhaustive and painstaking investigation of the whole matter. From a careful investigation of the evidence accompanying this report the Department can not bring itself to think any liability exists on the part of this Government for the killing of Montelongo and the Suaste child, or for the injury to Nicolasa Bautista, or the imprisonment of this woman, her child, and the wife of Montelongo.

While the statements made by the Mexican participants in the tragedy throw the blame for the shooting upon the Americans, Swink, the American deputy sheriff, the only other surviving witness of the affair (there were no witnesses to the shooting other than the parties concerned), swears that the Mexicans were the aggressors. The seeming preponderance of evidence in favor of the Mexican contention is overcome by the fact that several subsequent statement made by the Mexican women vary from the first in most important details, the principal variation being that the testimony of Suaste and the women at the inquest exonerates the deputy marshal from all blame in connection with the shooting, but Casimira Reyes, in her petition to the

circuit court of the United States in and for the western district of Texas, in an action for damages against Swink, declares that her husband was killed by gunshot wounds inflicted at the hand of Saul and Swink, and in her verbal statement to the special agent of this department at San Antonio she made Swink the chief assailant.

The character and credibility of the Americans as compared with the Mexicans also strengthens the American contention. Swink and Saul bear good characters; as much can not be said of Montelongo and Suaste. Swink was an officer of the law who had made many arrests without trouble. Saul was a man of means—a good citizen and particularly remarked in the community for his amiability and indisposition to violence. On the other side, Montelongo had admittedly stolen a calf. Suaste was his accomplice, who partook of the stolen property, and who appears to have been a deserter from the Mexican army. On the one side were the owner of the stolen property and an officer of the law, and on the other side were two men, overtaken, conscious of their crime, with stolen property in their possession, knowing by long residence in Texas the consequences of arrest, with rifles in their hands or within reach.

In your note of July 30, 1897, you remark that the theft of the calf—

“should have merely caused the arrest and punishment of its perpetrator by due process of law, to wit, by a charge previously brought by the injured party before a judge having jurisdiction in the case and the issuance of a warrant of arrest provided in such cases, and not by violent proceedings of an agent of the authorities, accompanied by the plaintiff (Saul), in the manner stated by the victims, which may be regarded as truth until a judicial investigation shall have proved the contrary.

Theft of cattle is a felony under the laws of Texas, it may be observed, and under the laws of that State an officer is not required to procure a warrant to arrest one whom he has reasonable grounds to suspect of having committed a felony. The presumption from all the circumstances is therefore very strong that the Mexicans opened fire to resist capture, and that the Americans returned fire in self-defense.

You further state in your note, above cited, that no general investigation was instituted to ascertain the facts in regard to the murder of Montelongo and Suaste's child.

It appears from the special agent's report, however, that upon the night of the shooting Justice of the Peace Dunham went to the scene of the tragedy and held an investigation upon the body of the dead Montelongo. The child did not die until afterwards. Furthermore, all the facts in regard to the shooting were investigated and brought out as fully as possible in the inquest on the body of Saul.

The finding of the coroner's jury was—

That on the 6th day of October, 1895, Florentino Suaste, Casimire Reyes, and Nicolasa Bautista, with malice aforethought, did shoot the deceased (Saul) with a gun, inflicting upon the body of the deceased, just above the left nipple, a gunshot wound, from the effects of which said deceased died.

The special agent submits sworn statements of the justice and of the acting district attorney, from which it appears that the proceedings were fairly conducted, and that on the evidence submitted Suaste was committed without bail and the women remanded on bond.

The grand jury at the November term, 1895, did not find the evidence sufficient to find an indictment against the women for the killing of Saul, and they were accordingly released. The minor children were

not arrested, but were permitted to accompany and remain with their mother, as an act of charity.

Taking into consideration all the evidence at the disposition of the Department, it is respectfully submitted that no liability whatever exists on the part of this Government for the killing of Juan Montelongo and Pedro Suaste.

Concerning the lynching of Florentino Suaste, which occurred on the night of October 11, 1895, while in jail awaiting trial, the Department is not willing to concede the liability of the Government for this unfortunate affair.

It would, however, be pleased to have placed at its disposal proof that Nicolasa Bautista was the wife of Florentino Suaste, and that her children were the children of the man who was lynched. This proof will be absolutely necessary before this Department considers any claim by herself, for herself, for indemnity on account of the lynching of Florentino Suaste. Upon its production the Department will recommend to Congress that an appropriation be made for the payment of a suitable indemnity.

Accept, etc.,

WILLIAM R. DAY,  
*Acting Secretary.*

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*Mr. Azpiroz to Mr. Hay.*

[Translation.]

No. 93.]

MEXICAN EMBASSY,  
*Washington, May 9, 1900.*

YOUR EXCELLENCY: Referring to the correspondence between the late Señor Romero and the Department of State concerning the claim by the Government of Mexico consequent upon the assassinations of Juan Montelongo and Pedro Suaste, of the lynching of Florentino Suaste, in the county of Lasalle, Tex., and of the imprisonment of the latter's family, I venture to call your attention to the concluding portion of the note (No. 318) of the 21st of February, 1898, in which the Hon. William R. Day, Acting Secretary of State, told Señor Romero that he would be glad to have presented to him proofs that Nicolasa Bautista was the wife of Florentino Suaste, and that her children were the children of the individual who was lynched, in order that the Department of State might take into consideration any claim made in their name for indemnity for the lynching of Florentino Suaste, and that as soon as such proofs can be produced the said Department will recommend the Congress to appropriate a sum for the payment to her of an adequate indemnity.

By direction of my Government I have the honor to forward to your excellency the depositions of Andreas Blatz, J. H. Clemens, I. J. Tilley, and Fred R. Bippert, residents of Medina County, in the State of Texas; the certificate of the Hon. H. E. Haas and of the Hon. August Kempf, judge and secretary, respectively, of said county; the declaration of Nicolasa Bautista de Suaste, widow of Florentino Suaste, and a statement by Señors Paschal and Ryan, lawyers of San Antonio, Tex., who prove the marriage of the said Nicolasa Bautista to Suaste, in accordance with the laws of the State of Texas, where they were living when the lynching of Suaste took place. There is

also added the certificate of the baptism of Mauricio Suaste, the son of the lynched man, and Nicolasa Bautista, to prove that he is heir to the proceeds of the indemnity.

In accordance with the statement of the Hon. William R. Day, in his note above mentioned, I request your excellency to be kind enough to take into consideration the proofs adduced, and if, as I hope, you find them sufficient, to ask the Congress of this country to authorize an appropriation to pay the said Nicolasa Bautista de Suaste and her son, Mauricio Suaste, a suitable indemnity on account of the lynching of Florentino Suaste.

On this occasion I take pleasure in renewing, etc.,

M. DE AZPÍROZ.

**The STATE OF TEXAS, County of Medina:**

I, Andreas Blatz, being duly sworn, on oath say: That I have lived in said county of Medina and State of Texas, for more than forty-five years last past, my present post-office address being Devine, Medina County, Tex.

I was acquainted with Florentino Suaste, a Mexican, who was murdered in or near the town of Cotulla, in Lasalle County, Tex., on or about October 10, 1895, and with his wife, Nicolasa Bautista de Suaste, and their children. Said Florentino and Nicolasa lived together as husband and wife from and after the time I knew them, and were living together as such when I first knew them. They held each other out and introduced each other to their acquaintances as man and wife, and raised a family of children. I first became acquainted with them about five or six years ago. The said Florentino was then working for Mr. F. Bippert. They frequently came to my place to visit another family of Mexicans who were on my place working for me.

ANDREAS BLATZ.

Subscribed and sworn to before me this 16th day of September, A. D. 1899, by the said Andreas Blatz, in person, his name being subscribed to the foregoing.

[SEAL.]

H. S. PERKINS,

Notary Public, Medina County, Tex.

**The STATE OF TEXAS, County of Medina:**

I, I. H. Clemens, being duly sworn, on oath say: That I have lived in said county of Medina and State of Texas for more than eight years last past, my present post-office address being Devine, Medina County, Tex.

I was acquainted with Florentino Suaste, a Mexican, who was murdered in or near the town of Cotulla, in Lasalle County, Tex., on or about October 10, 1895, and with his wife, Nicolasa Bautista de Suaste, and their children. Said Florentino and Nicolasa lived together as husband and wife from and after the time I knew them, and were living together as such when I first knew them. They held each other out to their acquaintances as man and wife, and raised a family of children. I first became acquainted with them about five or six years ago. The said Florentino was then working for Mr. F. Bippert.

I. H. CLEMENS.

Subscribed and sworn to before me this 9th day of September, A. D. 1899, by the said I. H. Clemens, in person, his name being subscribed to the foregoing.

[SEAL.]

H. S. PERKINS,

Notary Public, Medina County, Tex.

**The STATE OF TEXAS, County of Bexar:**

I, Fred R. Bippert, being duly sworn, on oath say: That I have lived in said county of Medina and State of Texas for more than seven years last past, my present post-office address being San Antonio, Tex.

I was acquainted with Florentino Suaste, a Mexican, who was murdered in or near the town of Cotulla, in Lasalle County, Tex., on or about October 10, 1895, and

with his wife, Nicolasa Bautista de Suaste, and their children. Said Florentino and Nicolasa lived together as husband and wife from and after the time I knew them, and were living together as such when I first knew them. They held each other out and introduced each other to their acquaintances as man and wife, and raised a family of children. I first became acquainted with them about six years ago. The said Florentino was then working for affiant's father, Fred Bippert, who is now dead, having died July 22, 1897, in Medina County, Tex.

FRED R. BIPPERT.

Subscribed and sworn to before me this 22d day of September, A. D. 1899, by the said Fred R. Bippert, in person, his name being subscribed to the foregoing.

[SEAL.]

JOSEPH RYAN,  
Notary Public, Bexar County, Tex.

**The STATE OF TEXAS, County of Medina:**

I, S. J. Tilley, being duly sworn, on oath say: That I have lived in said county of Medina and State of Texas for more than twelve years last past, my present post-office address being Devine, Medina County, Tex.

I was acquainted with Florentino Suaste, a Mexican, who was murdered in or near the town of Cotulla, in Lasalle County, Tex., on or about October 10, 1895, and with his wife, Nicolasa Bautista de Suaste, and their children. Said Florentino and Nicolasa lived together as husband and wife from and after the time I knew them, and were living together as such when I first knew them. They held each other out and introduced each other to their acquaintances as man and wife, and raised a family of children. I first became acquainted with them about 1894. The said Florentino was then working for Mr. F. Bippert.

S. J. TILLEY.

Subscribed and sworn to before me this 9th day of September, A. D. 1899, by the said S. J. Tilley, in person, his name being subscribed to the foregoing.

[SEAL.]

A. S. PERKINS,  
Notary Public, Medina County, Tex.

**HANDO CITY, Medina County.**

We herewith certify that we know personally Andreas Blatz, I. H. Clemens, S. J. Tilley, F. Bippert, and Fred Bippert for many years, and that they bear the reputation of being good citizens and credible men, their occupations being former stockmen and laboring men.

[SEAL.]

H. E. HAASS, County Judge.  
AUGUST KEMPF,  
County District Clerk, Medina County, Tex.

**The STATE OF TEXAS, County of Bexar:**

I, Nicolasa Bautista de Suaste, being duly sworn, on oath do say and hereby declare that with my husband, Florentino Suaste, I came to Texas about three years before the death of my said husband, who was murdered by a mob at or near the town of Cotulla, in Lasalle County, Tex., on October 10, 1895. We came from the Republic of Mexico, of which country we were both natives and citizens, my husband remaining a citizen of said Republic of Mexico until the time of his death, and I always remaining a citizen of Mexico. I am now a citizen of Mexico. We came to Texas in search of employment to earn our living. We were very poor, and when we came to Texas were informed by several good citizens that it was not necessary for a man and woman to have a ceremony performed by a priest or officer to make a good and valid marriage, but that it was sufficient if they agreed to be man and wife and live together as such, and that then they would be married and be man and wife. We—that is, myself and the said Florentino Suaste—then agreed to be man and wife, and to live together as such, which we did from that time until he was killed by the mob at or near Cotulla, in Lasalle County.

We have lived together openly and publicly as husband and wife in this State ever since, and were so known and introduced by each other in the communities where we lived in Texas, and especially in and near the town of Devine, Medina County, Tex.,

where we lived longest, and from where we were on our return to Mexico when my husband was murdered. I had born to me by my husband, Florentino Suaste, five children, all bearing their father's surname of Suaste, all of whom were recognized by him as his children and treated and cared for by him as his legitimate offspring. He always treated and regarded me as his wife and I always treated and regarded him as my lawful husband, and have never remarried since his death, being now a widow. As I have stated before, we were very poor, being at work on ranches and farms all the time since we came to Texas, and being satisfied that our marriage was lawful under the law of Texas, we did not hunt up a priest or magistrate to perform any ceremony.

In September, 1892, we were in San Antonio, Tex., looking for work when our child Mauricio was born, and we had him baptized at the Spanish cathedral of San Fernando as our legitimate son, certificate from the present parish priest in charge of the records of said church being hereto attached and made a part of this affidavit.

NICOLASA BAUTISTA (her mark) DE SUASTE.

Witness to said signature of Nicolasa Bautista de Suaste:

R. ALTGELT.

FRANCISCO MARTINEZ.

Subscribed and sworn to by Nicolasa Bautista de Suaste before me this 31st day of October, A. D. 1899.

[SEAL.]

ISAAC CHAS. BAKER,  
*Notary Public, Bexar County, Tex.*

The STATE OF TEXAS, *County of Bexar*:

I, Francisco Martinez, being duly sworn, on oath say: That I can correctly speak and translate the English and Spanish languages into each other, and that the foregoing statement made by Nicolasa Bautista de Suaste was correctly read and interpreted to her by me before she signed and swore thereto; that the same was written at her dictation and was fully and correctly explained and interpreted to her and the notary taking her affidavit.

FRANCISCO MARTINEZ.

Subscribed and sworn to before me this 31st day of October, A. D. 1899, by the said Francisco Martinez.

[SEAL.]

ISAAC CHAS. BAKER,  
*Notary Public, Bexar County, Tex.*

*Brief on the status of Florentino Suaste, deceased, and Nicolasa Bautista de Suaste, surviving widow, as tested by the laws of the State of Texas.*

#### FIRST.

1. In the State of Texas marriage is a civil contract and is valid when the man and woman enter into an agreement to become husband and wife and live together as such, and in pursuance to such agreement do live together and cohabit as husband and wife and hold each other out to the public as husband and wife.

A marriage in this State is either a statutory marriage or a common-law marriage.

In order to constitute a statutory marriage in Texas there must issue a license by a county clerk of some county in this State authorizing the marriage of the parties in question, which must be executed by their entering into the above agreement to live together as husband and wife before some regularly licensed or ordained minister of the gospel, Jewish rabbi, judge of the district or county court, or justice of the peace, who then indorses report or return of such agreement on the license, which report or return is recorded by the county clerk issuing the license.

A common-law marriage is the simple agreement to live together, and need not be in writing nor made in the presence of witnesses.

The above is laid down as a law in the State of Texas by its appellate courts, in the following cases:

G. H. and S. A. Rwy. Co. v. Cody, 50 S. W. Rep., 135, decided February 1, 1899; Ingersoll v. McWillie, 30 S. W. Rep., 56-61; same case in 30 S. W. Rep., 869; Chapman v. Chapman, 41 S. W. Rep., 534; Simons v. Simons, 39 S. W. Rep., 639; Simons v. The

State, 20 S. W. Rep., 793, and is not an isolated rule, for in all the States of the American Union which have not expressly prohibited marriage in any other form than that prescribed by statute a common-law marriage is valid. Thus in Missouri it is held that a license is not necessary to the validity of a marriage under a statute which does not declare void a marriage without such license, although it provides that "previous to any marriage in this State a license for that purpose shall be obtained," and that a common-law marriage is good, though not in conformity with the statutory requirements, the statute containing no express words of nullity (*State of Missouri v. Hiram J. Bittick*, 11 Law Rep. Annotated, 587), and in the following States a common-law marriage is valid:

Michigan: As decided by the United States Supreme Court in *Meister v. Moore*, 96 U. S., 76. Massachusetts: 1 Gray, 119. Georgia: *Askew v. Dupree*, 30 Ga., 173. Alabama: *Ely v. Gammel*, 52 Ala., 584. Illinois: *Campbell v. Beck*, 50 Ill., 171. New York: *Clayton v. Wardell*, 4 N. Y., 230; *Rose v. Clark*, 8 Paige, 574; *Cheney v. Arnold*, 15 N. Y., 351. Ohio: *Carmichel v. State*, 12 Ohio, 553. New Jersey: *Voorhees v. Voorhees*, 46 N. J. Eq., 411. Tennessee: *Grisham v. State*, 2 Yerg., 589. California: *Sharon v. Sharon*, 75 Cal., 1, 25. Iowa: *Blanchard v. Lambert*, 43 Iowa, 228. Kentucky: *Dunaresly v. Fishly*, 3 A. K. Marsh, 368. Minnesota: *State v. Worthington*, 23 Minn., 528. Mississippi: *Hargroves v. Thompson*, 31 Miss., 211. Rhode Island: *Matheron v. Phoenix*, 23 Am. L. R., 401. Pennsylvania: *Guardians of Poor v. Nathans*, 2 Brewst., 149, 152.

2. Proof of marriage by either the statute or common law is sufficient to establish the relation of husband and wife, and in proving a common-law marriage the testimony of either or both of the parties thereto is sufficient when supplemented by outside proof of their living together, holding themselves out to the world and recognizing each other as husband and wife.

Under the English common law neither the husband nor wife could testify for or against each other, but in Texas, by whose laws the marriage of Florentino Suaste and his wife, Nicolasa Bautista, should be tested under the rules of evidence governing trials in that State, it is provided by statute (Rev. Stat., 1895, art. 2301) "the husband or wife of a party to a suit or proceeding, or one who is interested in the issue to be tried, shall not be incompetent to testify therein except as to confidential communications between such husband and wife." Even in divorce cases the husband and wife shall be competent witnesses for and against each other. (Rev. Stat., 1895, art. 2979.)

In support of the proposition that outside testimony of man and woman living together and holding themselves out as husband and wife is sufficient proof of a common-law marriage, we refer to the above cited decisions of the appellate courts of Texas, also the following: *Cargile v. Wood*, 63 Mo., 501; *Redgrave v. Redgrave*, 38 Mo., 93; *Hynes v. McDermott*, 91 N. Y., 451; *Young v. Foster*, 14 N. H., 114; *Fleming v. Fleming*, 8 Black. (Ind.), 234; *Storm v. Boswell*, Dana (Ky.), 232; *Magginson v. Magginson*, 21 Oreg., 387; *Applegate v. Applegate*, 45 N. J. Ey., 116; *Coal Run Coal Co. v. Jones*, 127 Ill., 379.

When persons live and cohabit together as husband and wife and are generally reputed to be such, there is a presumption that they have been married. The courts look upon this presumption with great favor and it has been frequently held that a subsequent marriage might be presumed from the facts although the parties originally came together under a void contract. (*Bessinger v. Chapman*, 88 N. Y., 487, and cases cited; *Williams v. Kilburn*, 88 Mich., 279.)

As is said by Mr. Bishop (Bish., Mar. and Div., sec. 939), "These elements of proof, viz, cohabitation, reputation, declarations, conduct, and reception among friends and neighbors as married are commonly, in a perfect case, found in combination. All the latter ones are shadows attending on cohabitation and they should be simultaneous therewith.

"Together they make a complete case, while in legal doctrine there is no necessity of exhibiting all the shadows in connection with that from which they fall—cohabitation."

## SECOND.

The validity of a marriage is to be determined by the law of the place where it was celebrated. If valid there it is valid everywhere. (*Phillips v. Greg*, 10 Watts (Pa.), 158; *Crosby v. Berger*, 3 Edw. Ch. (N. Y.), 528; *Smith v. Woodworth*, 44 Barb. (N. Y.), 198.) The only exceptions to this rule being when the marriage is incestuous, polygamous, or prohibited by the positive laws of a country. (Am. and Eng. Ency. Law, title Conflict of Laws, vol. 3, paragraph 10, 1st ed.)

Thus it was held during the days of slavery that a statute of a slave State forbidding slaves to marry would not be regarded by the courts where the marriage was

good at common law. (*People v. Cooper*, 8 How. (N. Y.), Pr. 288.) And where the parties resident in one State to avoid the laws of the place of domicile go to another State and are married, the marriage is valid if so regarded in the country where celebrated, both in America and England. (Am. and Eng. Ency. Law, title Conflict of Laws, vol. 3, p. 600, and cases there cited.)

We therefore conclude, from the affidavits submitted to us, that there was a valid common-law marriage between Florentino Suaste and Nicolasa Bautista, his wife, and that the latter was his legal wife until their marriage relation was dissolved by his death, and that she is now legally his widow.

PASCHAL & RYAN,  
*Attorneys and Counsellors at Law.*

SAN ANTONIO, TEX., *October 31, 1899.*

## FIFTY-SIXTH CONGRESS, SECOND SESSION.

January 25, 1901.

[Senate Report No. 2037.]

Mr. Lodge, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 2313) for the relief of Christian Arndt, submit the following report:

Your committee has given this bill careful consideration, and can not see that its passage is justified either as a matter of equity or of treaty obligation. There is a conflict of statement between the beneficiary under this bill and the Government officials in charge of the work upon which he was engaged as to the circumstances and conditions in connection with the explosion by which Mr. Arndt was injured, so that the committee is unable to determine where the blame, if any, rests for his injury. It appears to your committee that Arndt was at least guilty of contributory negligence, but whether this is true or not he had a right of action against the contractor and the officers in charge of the work if his own statement is correct. This is all that a citizen of the United States would enjoy, and the case does not appear to be one for action by Congress.

Your committee also believes that the passage of this bill would create a dangerous precedent.

The papers which have been before your committee for its consideration in connection with this bill are appended hereto and made a part of this report, as follows:

DEPARTMENT OF STATE,  
*Washington, March 1, 1899.*

SIR: I have the honor to acknowledge the receipt of your letter of the 23d ultimo, calling my attention to Senate bill 5208, for the relief of Christian Arndt, of Shelby County, Tenn., a German subject, and requesting any information this Department can furnish on the subject of the injuries received by the said Arndt while discharging his duty as an employee of the United States on Government work at Amalia, Ark., on October 3, 1891.

In reply I have the honor to inclose herewith a copy of the correspondence which has passed between the German ambassador and this Department in the case.

The work on which Arndt was engaged at the time he was injured being under the direction of the War Department, further information can doubtless be obtained from the Secretary of War.

I have the honor to be, sir, your obedient servant,

JOHN HAY.

HON. CLARENCE D. CLARK,  
*Committee on Foreign Relations, United States Senate.*

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*Inclosures.*

From the German ambassador, July 4, 1898.  
To German ambassador, July 8, 1898.  
From German ambassador, July 15, 1898.  
To German ambassador, July 20, 1898.

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KAISERLICH DEUTSCHE BOTSCHAFT,  
*Washington, July 4, 1898.*

MR. SECRETARY: I have the honor to submit to your excellency's kind consideration the following case:

Christian Arndt, a German subject, who was working for the United States Government on the levee of the Mississippi River at Amalia, Ark., in 1891, lost a leg and was otherwise badly maimed by a dynamite explosion.

The accident was caused by neglect of general care on the part of the officers in charge.

The details of the case are given in Arndt's affidavit, of which I have the honor to inclose a copy.

Arndt's case was brought before Congress by the Hon. J. Patterson, of Tennessee, in 1894, and afterwards handed to his successor, the Hon. E. W. Carmack.

The latter honorable gentleman was not able to introduce a bill in Arndt's favor before the House Committee on Appropriations during this session on account of more urgent matters.

The bill is to be brought in next session, and so as to put it on a stronger basis I have the honor to beg your excellency to kindly give it your recommendation. I have made a careful investigation of the case, and can certify that the contents of the affidavit are truthful.

I avail myself of this opportunity to renew to you, Mr. Secretary of State, the assurances of my highest consideration.

HOLLEBEN.

HON. WILLIAM R. DAY,  
*Secretary of State.*

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UNITED STATES ENGINEER OFFICE,  
*Memphis, Tenn., September 3, 1897.*

SIR: In reply to your letter of the 31st ultimo, requesting me to state whether, at the time you received the injury to your leg, namely, in the month of October, 1891, you were working for the United States or for a contractor, I hereby certify that you were in the employ of the United States on the work under my charge.

Very respectfully,

AUG. F. NOLTY,  
*United States Assistant Engineer.*

MR. CHRIS. ARNDT, *City.*

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NEW ORLEANS, LA., *May 2, 1898.*

*To the Congress of the United States, Washington:*

Your memorialist, Christian Arndt, respectfully petitions for relief on the following state of facts:

I lost a leg by a dynamite accident when I was working for the Government on the levee of the Mississippi at Amalia, Ark., on the 3d of October, 1891. The leg is cut off

near the body. The other leg was broken, too; healed up not straight, and can be used but carefully or it may break again. There is also often severe rheumatism in the parts once broken and cut. I can have no satisfaction from the men most guilty, because the one is dead and the other is poor and at large.

The accident grew out of several dangerous circumstances, all general care being neglected by the officers, namely: (1) The superintendent was under the influence of liquor; (2) our gang had no foreman; (3) the men were in a hurry; (4) the man in charge of the battery was absent; (5) and no proper care was taken of me after I got hurt; otherwise I might have my leg still.

*The hurry.*—We were doing mattress work. Around the 1st of October all the men were engaged in sinking the mat to the bottom of the river. On the following day mattress making was resumed and it was found out that there was not fitting room enough for the new mat. A short end of the river bank already needed was to be graded yet. And this grading was done the next day—on 3d of October—in a hurry by many shovelers (including me) and some dynamite men blasting away stumps of trees.

*Whisky.*—Supt. J. Gehni, who hurried us up, was always under the influence of liquor, and Gehni's bad example induced the dynamite men to drink, too. When Gehni came to his home in Memphis, not long after my accident, he got the delirium, was put into the insane asylum to sober up, and when home again drank himself to death, literally to death. He was a saloonkeeper, and the way he died is well known in Memphis. I, myself, as a rule drink no whisky at all, and for the rest I am known as strictly temperate.

*No foreman.*—Our gang of shovelers was newly made up for that day and work only—all the men picked out from other gangs in the morning—and though we numbered between 30 and 40 men we got no foreman, but were simply put together with the dynamite gang.

*The accident.*—In the early afternoon there were, of all the stumps so much in the way, only three ones left. The one stump was near the top of the bank, another one was down near the water in a deep hole, and the third between them; I did not see the upper stumps get loaded, because there were too many men around; I saw only the lower stump in the hole getting dynamite, because I had to work right there all by myself. And I believed this lower stump alone would be blasted, because at one time only one stump used to get blasted before. Hence, when warning was given I moved off to a safe distance as to that lower stump, but there I was not too far away from the upper stump. This stump, however, blasted too, and a piece of it struck and hurt me.

So I believe the men blasted the last three stumps at once. The reason was the hurry. The blasting of a stump interrupted and delayed the whole work, and the men had order to clear the place the sooner the better.

*The man in charge absent.*—And strangely enough, the foreman of the dynamiters, who used to do the shooting, because in charge of the battery, he shall not have been there this time and the shooting be done by an irresponsible man. Jim Shea, another foreman, has told me this repeatedly; and I, myself, indeed did not see the man in charge either.

*The loss of the leg.*—I was sent to Osceola where the amputation was done only because there was no proper accommodation for a man in my condition, as the doctor later often said. Did the officers send me right away to the Marine Hospital in Memphis, I might have my leg still, for in that hospital cases shall have been cured just as bad or worse than mine without amputation. And the officers ought to and easily could have sent me there, because free medical attendance in that hospital was promised to us when hired, and because two Government boats were right at hand (the one having arranged the barges for the new mat). In five hours I could be brought to Memphis, but I had to lie there on the ground from about 2 p. m. till it grew dark, being sent then to Osceola where the amputation was done after 10 p. m.; that is after longer time than was needed to bring me to Memphis. And the transport on the boat going softly down the river to Memphis would have been much less painful for me than to lie on that common farm wagon going over holes, roots, and rocks to Osceola.

And here in Osceola, so far as I know, my bosses never looked after me, no matter how badly I was accommodated there, so that I am inclined to believe the bosses (officers) wanted me to die there and be forgotten. But the river commissioners, as I was told, began to protest and ordered me over to the hospital one month after I got hurt, and when I felt much weaker than before.

*Résumé of what was wrong.*—It was wrong, first, to make a drinker, Gehni, superintendent of dynamite business; second, to hurry up men working with and around dynamite; third, that the man in charge was absent; fourth, that too much whisky

was allowed and used; fifth, that our gang had no foreman (a foreman would have known the condition of the stumps and cared for his men); sixth, to put shovelers and dynamiters together, the most wrong of all.

When all those six points of general care are neglected by the bosses, a mere warning then is insufficient to prevent accidents; mistakes and confusion are rather inevitable, and the alleged carelessness on my side becomes the natural and necessary consequence of all the real carelessness on the Government side.

*What I am blamed for.*—(A false, one-sided report to the Government.) Captain Roessler hired Gehni, the drinker, and is therefore guilty, too. So is also his assistant, A. Noltz, who had general control over the work and my case; and, knowing their own share of guilt too well, both officers have tried to whitewash themselves by blaming me. They have said warning was given to me by the dynamiters twice, not heeded by me. That is wrong. The second warning has nothing to do with me, but with certain other men grading with the steam pump. These men refused to go away, doubtless because they, like me, did not know the other stumps were loaded, too; but then other men, not the dynamiters, hollered several times at the graders, till they at last moved off, one of them stopping not far away from the stumps. All this happened before I stopped, the dynamiters themselves caring neither for me nor the graders; nor did Gehni on that day ever blame a man for remaining too near the working place. He and his assistants rather always cursed us when we went too far away and returned so much the later to work. Therefore several men—I too—never went far away on that day.

But when "investigation" was made all the Irishmen and similar other men eagerly tried to save their friends Gehni and the dynamiters, what, of course, suited Roessler and Noltz, too. Therefore, in the official report all the wrong points mentioned above were carefully omitted and all the warnings for the graders transposed to me. But none of the investigators ever asked me how it happened—none of them heeded the *audi alteram partem*.

CHRISTIAN ARNDT.

STATE OF LOUISIANA, *Parish of Orleans*:

Witness my hand and seal this 3d day of May, 1898; and I certify that the contents of this affidavit were made known to the affiant before execution; that he is believed to be reputable and entitled to credit. I have no interest in this claim.

This affiant is not known to me.

He declares having written this statement himself and makes oath to the truth thereof.

LOUIS A. MARTINET,  
*Notary Public.*

No. 77.]

DEPARTMENT OF STATE,  
*Washington, July 8, 1898.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 4th instant, in relation to the affidavit and petition of Christian Arndt, a German subject, who is stated to have been maimed by a dynamite explosion while working for the United States Government on the levee of the Mississippi River at Amalia, Ark., in 1891, and who in consequence prays Congress for relief.

The antecedents of this case do not appear to be of record in this Department, nor can I find in the Journal of the House of Representatives or in the Congressional Record for 1894 any note of the introduction of a bill for Arndt's relief by the Hon. J. Patterson, of Tennessee, or the Hon. E. W. Carmack, or indeed any note whatever of the introduction of such a bill.

You state that the bill is to be brought in next session, and in order to put it on a stronger basis you request me to give it my recommendation. If and when such a bill is introduced at the next session and appropriately referred to a committee, I shall have much pleasure in communicating to the chairman of the committee copy of your note and its inclosures, to the end that the petition may have due consideration.

Be pleased to accept, Mr. Ambassador, the renewed assurance of my high consideration.

WILLIAM R. DAY.

His Excellency Herr von HOLLEBEN, etc.

KAISERLICH DEUTSCHE BOTSCHAFT,  
*Washington, July 15, 1898.*

Mr. SECRETARY: I have the honor to acknowledge the receipt of your note of the 8th instant in relation to the petition of Christian Arndt, a German subject, who was

mained by a dynamite explosion while working for the United States Government on the levee of the Mississippi River.

I beg to state that I have been informed by Mr. Heber May, attorney at law, into whose hands now Arndt's case has been placed by the Hon. E. W. Carmack, that at the end of the last session a bill has been printed regarding Arndt's relief, and that it is to be introduced during the next meeting of Congress.

It appears that the Hon. J. Patterson did not introduce any bill in Arndt's favor in 1894, as Arndt seemed to believe had been done.

Allow me, Mr. Secretary, to express my most sincere thanks for your readiness to communicate to the chairman of the committee a copy of my note and its inclosures, to the end that the petition may have due consideration.

Accept, etc.

HOLLEBEN.

HON. WILLIAM R. DAY,  
*Secretary of State, Washington, D. C.*

No. 82.]

DEPARTMENT OF STATE,  
*Washington, July 20, 1898.*

EXCELLENCY: I have had the honor to receive your note of the 15th of July in further relation to the petition of Christian Arndt, a German subject, who was injured by a dynamite explosion while working for the United States Government on the levee of the Mississippi River.

Upon your reference to the bill prepared by the Hon. E. W. Carmack toward the close of the last session of Congress it has been ascertained that the bill in question, being numbered "House of Representatives 6672," was introduced by Mr. Carmack on January 15 last and referred to the Committee on Claims and ordered to be printed, so that it is now regularly before Congress awaiting action by that committee.

It will be seen, however, from the text of the bill, of which I inclose a copy for your information, that the name of the beneficiary is given as "Christopher Arndt," not "Christian Arndt," and that he is not described as a German subject, but simply as "of Memphis, Tennessee." These circumstances prevented the identification of the case with that presented in your previous notes.

As the matter now stands it would be desirable that Arndt's counsel should at the next session of Congress procure an amendment of the bill correcting the error in the name and describing Arndt as a German subject; furthermore, if it be desired that the money shall be paid to the German Government on behalf of the beneficiary that the bill express that fact, following the appropriation made by the deficiency act of June 8, 1896, when indemnity was appropriated for the family of George Pauls, whose death was alleged to have been caused by carelessness in working the United States revenue-cutter *Colfax* in the harbor of Wilmington, N. C. Unless these changes be made, I could not well call the attention of the committee to the case as a diplomatic claim presented by your Government, but if so altered the correspondence had with your embassy could be communicated to the committee in response to such request for information as it may make.

Be pleased to accept, etc.,

WILLIAM R. DAY.

His Excellency HERR VON HOLLEBEN, etc.

NEW ORLEANS, LA., *May 2, 1898.*

*To the Congress of the United States, Washington:*

Your memorialist, Christian Arndt, respectfully petitions for relief on the following state of facts:

I lost a leg by a dynamite accident when I was working for the Government on the levee of the Mississippi, at Amalia, Ark., on 3d of October, 1891. The leg is cut near the body; the other leg was broken, too; healed up not straight and can be used but carefully or it may break again. There is also often severe rheumatism in the parts once broken and cut. I can have no satisfaction from the men most guilty, because the one is dead and the other is poor and at large.

The accident grew out of several dangerous circumstances, all general care being neglected by the officers, namely: (1) The superintendent was under the influence of liquor; (2) our gang had no foreman; (3) the men were in a hurry; (4) the man in charge of the battery was absent; (5) and no proper care was taken of me after I got hurt, otherwise I might have my leg still.

*The hurry.*—We were doing mattress work. Around the 1st of October all the men were engaged in sinking the matt to the bottom of the river. On the following day mattress making was resumed and it was found out that there was not fitting room enough for the new matt, a short end of the river bank, already needed, was to be graded yet; and this grading was done next day, on 3d of October, in a hurry by many shovelers (including me) and some dynamite men, blasting away stumps of trees.

*Whisky.*—Superintendent Y. Gehui, who hurried us up, was always under the influence of liquor, and Gehui's bad example induced the dynamite men to drinking, too. When Gehui came to his home, in Memphis, not long after my accident, he got the delirium; was put into the insane asylum to sober up, and, when home again, drunk himself to dead—literally dead. He was a saloon keeper, and the way he died is well known in Memphis. I, myself, as a rule, drink no whisky at all, and for the rest I am known as strictly temperate.

*No foreman.*—Our gang of shovelers was newly made up for that day and work only; all the men picked out from other gangs in the morning, and though we numbered between 30 and 40 men we got no foreman, but were simply put together with the dynamite gang.

*The accident.*—In the early afternoon there were of all the stumps so much in the way only three left. The one stump was near the top of the bank, another one was down near the water in a deep hole, and the third between them. I did not see the upper stumps get loaded because there were too many men around; I saw only the lower stumps in the hole getting dynamite, because I had to work right there all by myself; and I believed this lower stump alone would be blasted, because at one time only one stump used to get blasted before. Hence, when warning was given, I moved off into safe distance as to that lower stump, but there I was not too far away from the upper stump. This stump, however, blasted, too, and a piece of it struck and hurt me.

So I believe the men blasted the last three stumps at once. The reason was the hurry. The blasting of a stump interrupted and delayed the whole work, and the men had order to clear the place—the sooner the better.

*The man in charge absent.*—And strangely enough the foreman of the dynamiters, who used to do the shooting because in charge of the battery, he shall not have been there this time, and the shooting be done by an irresponsible man. Jim Shea, another foreman, has told me this repeatedly, and I myself, indeed, did not see the man in charge, either.

*The loss of the leg.*—I was sent to Osceola, where the amputation was done, only because there was no proper accommodations for a man in my condition, as the doctor later often said. Did the officers send me right away to the marine hospital in Memphis I might have my leg still, for in that hospital cases have been cured just as bad or worse than mine without amputation. And the officers ought to and easily could have sent me there, because free medical attendance in that hospital was promised to us when hired, and because two Government boats were right at hand (the one having arranged the barges for the new matt). In five hours I could be brought to Memphis. But I had to lie there on the ground from about 2 p. m. till it grew dark, being sent then to Osceola, where the amputation was done after 10 p. m. That is after longer time than was needed to bring me to Memphis. And the transport on the boat, going softly down the river to Memphis, would have been much less painful for me than to lie on that common farm wagon, going over holes, roots, and rocks to Osceola.

And here in Osceola, so far as I know, my bosses never looked after me, no matter how badly I was accommodated there, so that I am inclined to believe the bosses (officers) wanted me to die there and be forgotten. But the river commission, as I was told, began to protest, and ordered me over to the hospital one month after I got hurt and when I felt much weaker than before.

*Resumé of what was wrong.*—It was wrong (1) to make a drinker, Gehui, superintendent of dynamite business; (2) to hurry up men working with and around dynamite; (3) that the man in charge was absent; (4) that too much whisky was allowed and used; (5) that our gang had no foreman (a foreman would have known the condition of the stumps and cared for his men); (6) to put shovelers and dynamiters together—the most wrong of all.

When all these six points of general care are neglected by the bosses a mere warning, then, is insufficient to prevent accidents; mistakes and confusion are rather inevitable, and the alleged carelessness on my side becomes the natural and necessary consequence of all the real carelessness on the Government side.

*What I am blamed for.*—(A false, one-sided report to the Government.) Captain Roessler hired Gehui, the drinker, and is therefore guilty, too. So is also his assistant,

A. Noltz, who had general control over the work and my case. And knowing their own share of guilt too well, both officers have tried to whitewash themselves by blaming me. They have said warning was given to me by the dynamiters twice; not heeded by me. That is wrong. The second warning has nothing to do with me, but with certain other men grading with the steam pump. These men refused to go away, doubtless because they, like me, did not know the other stumps were loaded too. But then other men, not the dynamiters, hallooed several times at the graders till they at last moved off, one of them stopping not far away from the stumps. All this happened before I stopped, the dynamiters themselves caring neither for me nor the graders. Nor did Gehui on that day ever blame a man for remaining too near the working place; he and his assistants rather always cursed us when we went too far away and returned so much the later to the work. Therefore several men, I too, never went far away on that day.

But when "investigation" was made all the Irishmen and similar other men eagerly tried to save their friends Gehui and the dynamiters, which, of course, suited Roessler and Noltz, too. Therefore in the official report all the wrong points mentioned above were carefully omitted and all the warnings for the graders transposed to me. But none of the investigators ever asked me how it happened; none of them heeded the *audi alteram partem*.

CHRISTIAN ARNDT.

STATE OF LOUISIANA, *Parish of Orleans*:

Witness my hand and seal this 3d day of May, 1898; and I certify that the contents of this affidavit were made known to the affiant before execution; that he is believed to be reputable and entitled to credit. I have no interest in this claim. This affiant is not known to me. He declares having written this statement himself, and makes oath to the truth thereof.

LOUIS A. MARTINET, *Notary Public*.

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UNITED STATES ENGINEER OFFICE,  
*Memphis, Tenn., September 3, 1897.*

SIR: In reply to your letter of the 31st ultimo, requesting me to state whether, at the time you received the injury to your leg, namely, in the month of October, 1891, you were working for the United States or for a contractor, I hereby certify that you were in the employ of the United States, on the work under my charge.

Very respectfully,

AUG. J. NOLTZ,  
*United States Assistant Engineer.*

MR. CHRIS. ARNDT, *City*.

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NEIGHBOR'S AFFIDAVIT.

STATE OF LOUISIANA, *County of Orleans*:

On this 9th day of May, 1898, personally appeared before me, an officer authorized to administer oaths for general purposes within and for the county and State aforesaid, Michael Zinser, aged 48 years, occupation cigar maker, residing 917 Elysian Fields avenue, New Orleans, La., who, being sworn, declares, in relation to general character, as follows: That I have been acquainted with Christian Arndt for three months, and during that time have worked with him. I found him temperate, drinking only an occasional glass of beer; never intoxicated or subject to bad habits. I believe his general reputation for truth and veracity is very good. I have no interest in this claim.

MICHAEL ZINSER.

Witness my hand and seal this 9th day of May, 1898; and I certify that the contents of this affidavit were made known to the affiant before execution; that he is believed to be reputable and entitled to credit. I have no interest in this claim.

[SEAL.]

LOUIS A. MARTINET,  
*Notary Public.*

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STATE OF LOUISIANA, *County of Orleans*:

On this 9th day of May, 1898, personally appeared before me, an officer authorized to administer oaths for general purposes within and for the county and State afore-

said, Fred Macke, aged 45 years, occupation cigar maker, residing Rossean between Jackson and Josephine, N. O., who, being sworn, declares in relation to general character as follows:

I have known this man, Christian Arndt, for about three months. He is a cigar maker. I have worked with him for the last three months. During this time I have observed that he does not use intoxicating liquors to any extent, drinking occasionally a glass of beer, never becoming intoxicated. His general character is good, and I judge that he is a man of honor, and believe that his veracity is good.

I have no interest in this claim.

FRED MACKE.

Witness my hand and seal this 9th day of May, 1898; and I certify that the contents of this affidavit were made known to the affiant before execution; that he is believed to be reputable and entitled to credit. I have no interest in this claim.

[SEAL.]

LOUIS A. MARTINET,  
Notary Public.

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UNITED STATES SENATE,  
Washington, D. C., January 19, 1901.

MY DEAR SENATOR: I desire to call your attention to the following points in reference to the bill (S. 2313) for the relief of Christian Arndt, now pending before the Senate Committee on Foreign Relations:

The Chief of Engineers, U. S. A., in his report to the committee on this bill takes the position that the accident to Arndt was due to his own fault and negligence; but when said report and the papers accompanying it are carefully examined it will be seen that this conclusion of the Chief of Engineers rests entirely upon statements made by Assistant Engineer Noltz, who was a civilian engineer employed by the Government in charge of the work at the time that the accident occurred, in his two communications, one of date October 5, 1891, to Capt. S. W. Roessler, Corps of Engineers, and the other of date January 10, 1901, to Capt. E. E. Winslow, Corps of Engineers. In his report or letter of date October 5, 1891, to Captain Roessler, Assistant Engineer Noltz bases his conclusion that the accident was due to Arndt's negligence upon the statements of men who witnessed it. It does not appear that these statements were given under oath, nor how many of those present at the time of the accident were questioned or examined. According to Assistant Engineer Noltz the men who were examined by him stated that Arndt, when asked why he had not gotten farther away from the blast instead of going closer to it, admitted that he wanted to see the explosion. It nowhere appears in the report of the Chief of Engineers as to how long Arndt had been engaged on the work at the time that the accident occurred, but it does appear from the statements in Arndt's affidavit, giving a description of the force at work and of the manner in which the stumps were blown up, that he must have been engaged on the work for a considerable time before the accident occurred, and must have, therefore, been perfectly familiar with the method of blowing up the stumps. Hence it is highly improbable that he would have voluntarily exposed himself to danger so great, in order to see a thing with which he was already familiar.

Assistant Engineer Noltz's letter of date January 10, 1901, gives no new facts, and is evidently based upon the report which he made about ten years before.

Now, when the affidavit of Arndt is examined, it will be found that it was written by himself, and that it gives in his own language a very plain, simple, and credible explanation of how the accident occurred. To my mind it carries with it the impress of truthfulness.

It will be seen further that the German ambassador, in his letter to the Secretary of State of date July 4, 1898, states that he has made a careful investigation of the case and can certify that the contents of the affidavit are truthful.

In order that the bill may comply with the precedents on this subject I hand you herewith an amendment, which I suggest that your committee recommend, if it is favorably reported, as I hope it will be.

I return herewith to you all of the papers bearing on this case.

Very respectfully,

THO. B. TURLEY.

Hon. H. C. LODGE,

Acting Chairman Senate Committee on Foreign Relations,  
Washington, D. C.

OFFICE OF THE CHIEF OF ENGINEERS,  
UNITED STATES ARMY,  
Washington, January 17, 1901.

SIR: I have to acknowledge the receipt of your letter of January 10, 1901, inclosing S. 2313, Fifty-sixth Congress, first session, for the relief of Christian Arndt.

For a history of the case attention is invited to the accompanying copies of a report of Capt. (now Maj.) S. W. Roessler, Corps of Engineers, dated December 2, 1891, and the indorsements thereon; letters of Assistant Engineer Aug. J. Noltz to Captain Roessler, October 5, 1891, and Capt. E. E. Winslow, Corps of Engineers, on January 10, 1901, and, finally, to Captain Winslow's letter of January 11, 1901, reporting upon the proposed bill.

The above papers constitute all the information in this office concerning the matter, and seem to show that the injuries to Mr. Arndt were due to his own carelessness in disregarding warnings and instructions.

It is therefore suggested that the words "without his fault or negligence," in line 8 of the proposed bill, do not appear to represent the facts in the case.

Very respectfully,

JOHN M. WILSON,  
Brigadier-General, Chief of Engineers, U. S. Army.

Hon. H. C. LODGE,  
United States Senate.

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UNITED STATES ENGINEER OFFICE,  
Memphis, Tenn., January 11, 1901.

GENERAL: I have the honor to return herewith Senate bill No. 2313, Fifty-sixth Congress, first session, entitled "A bill for the relief of Christian Arndt," referred to me for report in Department letter of January 5, 1901 (37825).

I inclose herewith a report of Aug. J. Noltz, assistant engineer, dated January 10, 1901, who was in charge of the works of improvement at the time the said Christian Arndt received his injury, which report gives in detail all the circumstances connected therewith.

It is respectfully suggested that the bill be amended by striking out the words "without his fault or negligence," in line 8, as it appears that the injuries received by Arndt were caused directly through his own fault and negligence, and his disobedience of orders.

I also inclose, as directed, letter of Maj. S. W. Roessler, dated December 2, 1891, returned to him by Department indorsement of December 8, 1891.

Very respectfully,

E. EVELETH WINSLOW,  
Captain of Engineers.

Brig. Gen. JOHN M. WILSON,  
Chief of Engineers U. S. A., Washington, D. C.

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UNITED STATES ENGINEER OFFICE,  
Amelia, Ark., October 5, 1891.

SIR: On the evening of the 3d instant, while a large stump was being blasted, a laborer named Chris. Arndt was seriously injured by being struck by a flying chunk. The man's left leg was broken below the knee, his right thigh broken, and right kneecap completely shattered. This latter injury rendered amputation of the right leg necessary if the man's life was to be saved. The operation was performed on the evening of the accident, and so far the man is doing very well.

From statements of the men who witnessed the accident the following facts were adduced, viz: That when the danger signal was given the man lingered, and when called to by the men to get farther away he simply replied that he could take care of himself, and instead of moving farther away the man actually came closer to the crest of the slope where he could see the blast go off. When asked why he did not get farther away, he admitted that he wanted to see the explosion.

The blaster from the firing point did not have a full view of the field, but presumed that after the lapse of a certain period of time everybody was safe.

The accident is to be regretted, but I can not see that any blame attaches to anyone connected with the work.

Very respectfully, your obedient servant,

AUG. J. NOLTZ,  
Assistant Engineer.

Capt. S. W. ROESSLER,  
Corps of Engineers, U. S. A., Memphis, Tenn.

UNITED STATES ENGINEER OFFICE,  
Luxora, Ark., January 10, 1901.

SIR: In compliance with instructions received from you through Chief Clerk Julius Lohman under date of the 8th instant, I have the honor to forward copy of a letter written by me to Capt. S. W. Roessler, Corps of Engineers, U. S. A., at the time of the accident to Chris. Arndt. I have but little to add to the statements contained in that letter, except to reaffirm most positively that Chris. Arndt suffered injury by neglecting to heed the warning given prior to firing the blast. In no case was a blast ever fired until the blaster had satisfied himself that no person was near enough to be injured, but after he once got behind his shelter it was impossible for him to see whether any man returned to the area of danger. The sole cause of the accident was the man's curiosity to see a blast go off. This prompted him to leave the place of safety to which he with other men had retired and to return, despite the warning cries of the men, to a place where he had a full view of the blast.

The United States has already paid a heavy surgical bill for this man.

Very respectfully, your obedient servant,

AUG. J. NOLTY, *Assistant Engineer.*

Capt. E. EVELETH WINSLOW,  
*Corps of Engineers, U. S. A., Memphis, Tenn.*

UNITED STATES ENGINEER OFFICE,  
Memphis, Tenn., December 2, 1891.

SIR: I have the honor to request authority to pay Drs. H. C. and J. H. Dunavant, of Osceola, Ark., the sum of \$305 for professional services rendered by them to one Chris. Arndt, a laborer, who was injured October 3, 1891, while in the employ of the Government at Plum Point; to pay Robert Goetz the sum of \$30 for one month's board and lodging to said Arndt and nurse, and to pay the sum of \$5 for ambulance service from Fletchers Bend to Osceola and from Osceola to steamboat landing.

From the report of the assistant engineer in charge, who examined the eyewitnesses to the accident, it appears that while a stump was being blasted near the foot of a grade bank said Arndt, deliberately disregarding the warnings which had been several times given him, approached close to the crest of the bank in order to see, as he stated, the effect of the blast, and was struck by a flying chunk, breaking his left leg under the knee, breaking right thigh, and completely shattering right kneecap. A thigh amputation of right leg was necessary to save life, and his removal to the marine hospital at Memphis being deemed unsafe, was conveyed to Osceola, Ark., and attended by the local physicians.

The bill for surgical attendance is inclosed, and its payment, with that of the two other amounts above given, is urgently recommended as the only means by which the parties can be compensated.

Very respectfully, your obedient servant,

S. W. ROESSLER,  
*Captain of Engineers.*

Brig. Gen. THOMAS L. CASEY,  
*Chief of Engineers, U. S. A., Washington, D. C.*

[First indorsement.]

OFFICE CHIEF OF ENGINEERS, UNITED STATES ARMY,  
December 8, 1891.

Respectfully returned to Captain Roessler.

Payment of the sum of \$5 for ambulance service is approved.

There is no authority of law or regulation for payment for board of the injured man and his nurse.

The bill of Dr. Dunavant for professional services seems excessive.

By command of Brigadier-General Casey:

H. M. ADAMS,  
*Major, Corps of Engineers.*

[Second indorsement.]

UNITED STATES ENGINEER OFFICE,  
Memphis, Tenn., January 19, 1892.

Respectfully returned to Brig. Gen. T. Lincoln Casey, Chief of Engineers, United States Army, inclosing a new bill for surgical attendance amounting to \$218, in lieu of the first one submitted, amounting to \$305, which has been withdrawn.

S. W. ROESSLER,  
*Captain of Engineers.*

## CHRISTIAN ARNDT.

[Third indorsement.]

OFFICE CHIEF OF ENGINEERS, UNITED STATES ARMY,  
*January 22, 1892.*

Respectfully returned to Captain Roessler.

The inclosed bill is not approved; if paid by any disbursing officer, the amount will be charged against him by the accounting officer of the Treasury Department.

By command of Brigadier-General Casey:

H. M. ADAMS,  
*Major, Corps of Engineers.*

[Fourth indorsement.]

UNITED STATES ENGINEER OFFICE,  
*Memphis, Tenn., January 11, 1901.*

Respectfully returned to the Chief of Engineers, in accordance with Department letter of January 5, 1901.

E. EVELETH WINSLOW,  
*Captain, Engineers.*

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CLAIMS AGAINST THE UNITED STATES OF DIPLOMATIC AND  
CONSULAR OFFICERS OF THE UNITED STATES FOR  
REIMBURSEMENT AND EXTRA PAY.

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# CLAIMS AGAINST THE UNITED STATES OF DIPLOMATIC AND CONSULAR OFFICERS OF THE UNITED STATES FOR REIMBURSEMENT AND EXTRA PAY.

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## EIGHTEENTH CONGRESS—FIRST SESSION.

January 19, 1824.

[Senate Report No. 17.]

Mr. Mills, from the Committee on Foreign Relations, to whom was referred the petition of Richard O'Brien, submitted the following report:

That the petitioner prays an allowance for losses sustained, expenses incurred, and services rendered the United States as consul-general at Algiers.

The committee find that in May, 1806, soon after the return of Captain O'Brien from the coast of Barbary, his account as consul-general was allowed and settled at the proper Department and the balance in his favor, amounting to \$33,159, was paid to him from the Treasury; that this sum comprised the whole amount then claimed of the Government, so far as the committee can judge from the copy of the account then exhibited, excepting the sum of \$600, which was referred by the Auditor to the Secretary of State, as belonging exclusively to that Department, and which was thereupon allowed and paid to the said O'Brien.

The committee further find that in April, 1808, the said O'Brien exhibited another claim principally on account of the loss of a vessel called the *Tickelhodge*, purchased of the Regency of Algiers for a dispatch vessel, and which was taken and condemned at Malaga while proceeding with dispatches to the United States. This claim amounted to \$17,099.25, and purported to be in full of all claims in favor of said O'Brien, and was admitted and sanctioned by the then Secretary of State, Mr. Madison, although a part of said claim was unsupported by any voucher or evidence except the oath of the petitioner. The balance, amounting to \$13,899.25, was thereupon paid him.

In the year 1814 the said O'Brien again presented himself to the Department with further claims, but of what character or to what amount does not appear, for, before they were conclusively acted upon, the petitioner, in consequence of domestic misfortunes, returned home, and nothing further was then done upon the subject.

It appears further to your committee that the original general account of Captain O'Brien was, in August, 1814, consumed with the Treasury building, together with all the vouchers, subordinate accounts, and abstracts connected therewith, which had been filed in that office.

Some time after this, in 1818, the petitioner exhibited to the Department a variety of claims; but as the loss of the accounts and papers, as above stated, rendered it impossible to determine whether the items in that account had or had not been admitted in the former settlements, the whole claim was rejected by the Department, and the petitioner withdrew his account.

Afterwards the petitioner applied to Congress, and in May, 1820, an act passed for his relief, under which he obtained the sum of \$10,174.66, \$8,700 of which was to indemnify him for so much paid the Dey's broker and ministers for the loss of their shares, respectively, in the vessel *Vickelhadge*, taken and condemned as above mentioned. And in this settlement it is stated by the Secretary of State that two items only of the account presented on that occasion by the petitioner were deemed inadmissible under the act, the one amounting to \$8,000, for the cost and outfit of said vessel, and the other amounting to \$4,934.50, for his own interest in the cargo.

In May, 1822, an act was passed explanatory of the last-mentioned act, under which he obtained the further sum of \$8,000, being for the cost and outfit of said vessel. Any allowance for his own interest in the cargo of said vessel, was expressly prohibited by said acts of Congress, on the ground of the danger of permitting public officers to engage in equivocal commercial speculations, in which the public agent is blended with the private adventurer in transactions which when successful turned wholly to the profit of the latter, and when disastrous to the charge of the Government.

The committee are not unmindful of the important services rendered to the Government by Captain O'Brien in a situation of great public embarrassment and personal hazard, and were desirous that the most complete and ample justice should be done by those in whose interests he evinced so much zeal and ability; but, considering that his accounts underwent a full and fair investigation while these services were well known to the Government and fresh in his own recollection; that his claim was then allowed in its utmost extent, and that the settlement of 1808 purported to be a final one of all his claims as consul-general; considering the sums which have since been allowed him under the acts of Congress above mentioned and the loss of his papers as above stated, they can not, in justice to the Government, recommend any further interposition of Government in his behalf. They therefore submit the following resolution:

*Resolved*, That the petitioner have leave to withdraw his petition.

(Leg. Jour., p. 113.)

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May 21, 1824.

On an act for the relief of John Mitchell, Mr. Mills reported:

The petitioner was agent for prisoners of war at Halifax during the late war, and claims to be remunerated for certain extraordinary expenses incurred and to be exempted from the payment of a draft which he drew entirely on account of the Government and which was lost by the failure of the person in whose favor it was drawn, through the remissness of other agents of the Government. Mr. Mitchell rendered the Government great service during the Revolutionary war and is entitled to relief.

(Leg. Jour., pp. 768, 780, 781.)

[See pp. 628, 629.]

## NINETEENTH CONGRESS, FIRST SESSION.

January 25, 1826.

On petition of Alexander Scott, Mr. Mills reported:

That from the petition and documents referred to them it appears: That some time previous to March, 1812, the said petitioner was appointed by the then President Madison a political or diplomatic agent to Venezuela, in South America.

That he was in the employment of the Government in that capacity until May 31, 1813, and that on settlement of his accounts at the proper Department in December of that year he was allowed compensation at the rate of \$2,000 per annum.

The petitioner now asks from Congress a further allowance and states in his petition various facts and arguments tending to show that he sustained great pecuniary injury by undertaking said mission, and that he is entitled as well upon principles of justice as the stipulations of the then Executive to this allowance.

The committee, however, without expressing any opinion upon the merits of the claim, would barely observe that the appointment of the petitioner and the fund for his compensation were under the entire control of the Executive, and from a view of all the facts and circumstances, which must be much better known to the Executive than to Congress, if justice has not already been done to the petitioner, that department has full power to render it. They therefore recommend the adoption of the following resolution:

*Resolved*, That the Committee on Foreign Relations be discharged from the further consideration of the petition of Alexander Scott, and that the petitioner have leave to withdraw his petition and papers.

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March 27, 1826.

On petition of Edward Stevens, of St. Croix, Mr. Macon reported:

That the petition and accompanying account claim from the United States the sum of \$9,400 as a balance due to said Stevens for his salary and for expenses incurred by him between the 10th day of March, 1799, and the 25th day of September, 1801, in the character of consul-general and chargé d'affaires to the authorities of Santo Domingo. That in the year 1804 said Stephens presented to the proper officers of the United States his account, in which he claimed the sum of \$27,325, leaving said sum of \$9,400 now claimed unpaid until some additional vouchers could be procured and furnished by him. That said Stevens resides in the island of St. Croix and has been very much afflicted with the gout. In consequence of which and of the unsettled state of public affairs in the island of Santo Domingo, where alone the additional vouchers required could be procured, the petitioner never has been enabled to procure any additional documents. The petitioner further represents that such documents as he possessed in 1804 were, with his account, deposited in the proper office, and that afterwards, in the year 1814, they were destroyed by fire. It is likewise represented by said agent that there is justly due to said Stephens the sum of \$5,625 in addition to said sum of \$9,400, which will be abandoned if said last-mentioned sum is now paid without fur-

ther trouble; but if he is compelled to procure vouchers for said \$9,400, he will then claim the whole sum due him, amounting to \$15,025.

Upon examining the documents which accompanied the petition and such others as the committee have been able to procure from said Stevens which will authorize this application to Congress, and this would of itself be a decisive objection with them against any allowance being made by virtue of said petition, for, although in this instance no inconvenience might result from it, yet once establish the precedent that an allowance would be made in such cases and the time is not distant when it must either be departed from or numerous frauds would be the consequence.

But, independent of this objection, the committee can see no wisdom which would authorize them to say the United States owed any sum whatever to said Stevens. In 1804 the whole sum appears to have been paid to him which the proper officers then thought the vouchers produced would justify. It is admitted that no additional vouchers have been since produced and that those in existence have been accidentally destroyed, so that no vouchers whatever now exist. If the vouchers produced in 1804 would not authorize the payment of the sum now claimed, your committee are at a loss to know how they would be justified in recommending a law to be passed which would direct such payment without any voucher whatever. Without the necessary vouchers to show that the sum claimed is justly due the committee are of the opinion no payment should be made, and if the necessary vouchers are produced no law whatever is necessary to be passed.

The committee beg leave further to state that the suggestion that a larger sum may hereafter be claimed until the present demand is now satisfied ought, in their opinion, to have no influence, because whenever the petitioner shall show that the United States are indebted to him in any sum whatever, as they are able, so it is hoped and believed, they will be willing to satisfy such demand, without regard to its amount.

Upon the whole the committee recommend that said agent have leave to withdraw his petition and the accompanying documents.

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[See pp. 627, 629.]

#### NINETEENTH CONGRESS, SECOND SESSION.

January 29, 1827.

On petition of Alexander Scott, Mr. Sanford reported as follows:

That from the petition and documents referred to them it appears that some time previous to March, 1812, the said petitioner was appointed by the then President, Madison, a political or diplomatic agent to Venezuela in South America; that he was in the employment of the Government in that capacity until the 31st day of March, 1813, and that on settlement of his accounts at the proper department in December of that year he was allowed compensation at the rate of \$2,000 per annum.

The petitioner now asks from Congress a further allowance, and states in his petition various facts and arguments tending to show that he sustained great pecuniary injury by undertaking the said mission, and that he is entitled, as well upon principles of justice as the stipulations of the then Executive, to this allowance.

The Committee, however, without expressing any opinion upon the merits of the claim, would barely observe that the appointment of the petitioner and the fund for his compensation were under the entire control of the Executive, and from a view of all the facts and circumstances, which must be much better known to the Executive than to Congress, if justice has not already been done to the petitioner, that department has full power to render it. They therefore recommend the adoption of the following resolution:

*Resolved*, That the Committee on Foreign Relations be discharged from the further consideration of the petition of Alexander Scott, and that the petitioner have leave to withdraw his petition and paper.

The resolution recommended by this committee was adopted by the Senate on the 17th day of February last.

This committee now entirely concur in the views and opinions expressed by the committee at the last session, and that they accordingly recommend that the following resolution be adopted:

*Resolved*, That the prayer of petitioner be rejected.

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[See pp. 627, 628.]

#### **TWENTY-FIRST CONGRESS, FIRST SESSION.**

**February 17, 1830.**

[Senate Report No. 57.]

Mr. Tazewell made the following report:

The Committee on Foreign Relations, to which was referred a bill that passed the House of Representatives on the 6th of January, 1830, for the relief of Alexander Scott, have, according to order, had the said bill, together with all the documents which accompanied the same, under their consideration, and beg leave to submit to the Senate the following report:

Most of the material facts which exist in this case are stated in a report made to the House of Representatives by a committee of that body on the 10th day of February, 1829, to which report (hereto annexed) this committee beg leave to refer. But while this committee concur with that of the House of Representatives in all the inferences of fact which the latter have deduced from the evidence and documents submitted to them, this committee do not concur in the opinion that these facts justify a recommendation of the passage of this bill, which was reported to and has recently passed the House of Representatives as aforesaid. On the contrary, this committee are of opinion that the facts shown in this case require that the said bill should be rejected.

Alexander Scott, for whose relief this bill is intended, was appointed an agent of the United States at Caracas on the 21st day of March, 1812. After being detained some time in Baltimore by an embargo on all vessels in the ports of the United States, he at length, in the month of May, 1812, departed from thence to perform the objects of his appointment. He arrived at Caracas, where he remained until the month of March, 1813, acquitting himself while there to the entire satisfaction of his Government; but in March, 1813, he was compelled by the Spanish authorities suddenly to leave the country, of which they had then acquired the possession, and he returned to the United

States in the month of May, 1813. Upon his return here he applied at the Treasury Department to have the account for his compensation as agent aforesaid there settled. This settlement was effected by the proper officers of that Department on the 14th of December, 1813, when he was allowed for his services aforesaid, between the 21st of March, 1812, and the 31st of May, 1813, the sum of \$2,394.52, being at the rate of \$2,000 per annum, and the further sum of \$700 on account of his expenses incurred in Baltimore while he was detained there by the embargo aforesaid, and his account was thereupon closed.

In the year 1825 Mr. Scott again applied to the Treasury Department, claiming such an additional compensation to that which had formerly been allowed him as would make his compensation equal to that allowed Mr. Poinsett for a similar period. The foundation of this new claim was an allegation on the part of Mr. Scott that, prior to his departure from the United States, Mr. Monroe, the then Secretary of State, had informed him that his compensation should be at the same rate as that of Mr. Poinsett, who had been previously sent to some other parts of South America on a similar service. That Mr. Poinsett's compensation had not been settled by the Treasury Department in December, 1813, when Mr. Scott's account was closed; but that upon the settlement of Mr. Poinsett's account afterwards he had been allowed a sum equal to \$3,000 per annum, which allowance Mr. Scott then also claimed. This application of Mr. Scott was rejected by the proper officers of the United States, to whom it had been submitted.

Failing to obtain from the Executive the additional compensation which he then claimed, Mr. Scott presented a petition to the Senate, praying that Congress would pass a special act granting him the relief he had so asked and been refused. This petition was referred by the Senate to their Committee on Foreign Relations, which committee, on the 25th of January, 1826, made a report to the Senate, asking to be discharged from the further consideration of this subject, and that the petitioner should have leave to withdraw his petition and papers. The Senate considered this report on the 17th of February, 1826, and concurred therein. At the next session of the Senate a similar petition was presented to that body by Mr. Scott, which was again referred to a similar committee. This committee, on the 29th of January, 1827, made a report to the Senate, concluding with a resolution that the prayer of the petitioner ought to be rejected. The Senate considered this report on the next day and then confirmed the resolution so reported.

At the next session of Congress Mr. Scott presented a similar petition to the House of Representatives, where it was referred to the Committee on Foreign Affairs, who, on the 7th of March, 1828, made a report to the House, concluding with a resolution that the prayer of the petitioner ought not to be granted. The House of Representatives, on the same day, considered the said report and ordered it to be laid on the table. The same application was renewed at the next session, when a more favorable report was made, and a bill for the relief of Mr. Scott was reported on the 10th day of February, 1829. Upon this bill no further action was had at that session; the same application was therefore repeated at the present session of Congress, when the bill now referred to the committee has been passed by the House of Representatives, as has been stated.

No evidence tending to establish any material fact in this case has been now exhibited, which evidence was not exhibited to the proper

executive officers of the Government in 1825, and to the Senate in 1826 and 1827, and to the House of Representatives in 1828, when this subject was under their consideration. This committee therefore deem this a fit occasion to express their opinion that it should be a very strong case indeed which ought to induce the Senate, upon the same facts, to pronounce a decision different from the deliberate decisions previously given by the proper executive officers of the Government, by the Senate itself, and by the House of Representatives, in relation to any private claims. A departure from this general rule must necessarily produce much confusion in the action of the Government upon all subjects and invite the perpetual repetition of the same applications (however improper these may be) until they are granted. Nor, in the opinion of this committee, is there anything in the present case that entitles it to be considered as a proper exception out of such a general rule.

The claim of Mr. Scott was one the nature of which was perfectly understood by the executive officers of the Government when it was preferred to and settled by them in 1813. All the circumstances attending it were then of very recent occurrence and must have been fresh in the recollection of Mr. Monroe, the then Secretary of State, by whom the alleged promise is said to have been made, and who had full discretion and power to have increased the allowance made to Mr. Scott if he had judged it proper so to do. But yet no such allowance was then made. The compensation allowed to Mr. Poinsett was fixed and settled so far back as 1817, when, if there had been any similitude between his and the present case (which in the opinion of this committee there is not), Mr. Scott might then have preferred his application for an increased allowance on the ground upon which he now rests it. But he forebore to do so until the year 1825, when the President, from whom he had received his appointment, and the Secretary of State, with whom the alleged contract is said to have been made, had both retired from office. Being answered by Mr. Clay, the then Secretary of State, that "he did not think it proper to disturb an account so long settled," he prefers his application first to the Senate, where, meeting with an unfavorable reception, it is then presented to the House of Representatives, and again and again repeated to that body, until the present bill has passed. Unless, then, it shall be the opinion of the Senate that it is proper to disturb such accounts as this, after they have been so long settled, this committee are of opinion that the bill in question should be rejected.

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April 27, 1830.

Report on memorial of Anne M. Pinkney, widow of the late William Pinkney:

That the memorialist represents that her late husband was sent on a special mission to London, in the month of May, 1806, to be associated with Mr. Monroe, the resident minister there, and carried with him a commission to succeed that gentleman as the resident minister at that court, in case he chose to retire. That Mr. Monroe did retire in about eighteen months after the arrival of Mr. Pinkney in London, and was then succeeded by the latter in the place of resident minister so becoming vacant. That for the special mission Mr. Pinkney was allowed the usual outfit, but for the appointment of resident minis-

ter, as incident to which he claimed another outfit of \$9,000 (the usual sum allowed to all such ministers), the President of the United States allowed him one-half that sum only, permitting the claim to the other half to be retained for consideration. The memorialist therefore prays that Congress will allow her, as administratrix aforesaid, the sum of \$4,500, being a moiety of the customary outfit as aforesaid, together with interest thereon to be computed from the time the said decedent was entitled to receive the same.

The committee have not considered it necessary to examine into the facts which may constitute this case, or to decide upon any of the questions that may arise thereupon, inasmuch as it is represented in the said memorial itself that the claim now preferred by the memorialist to this body hath already been preferred to the President of the United States, by whom it was properly cognizable, and has not as yet been decided upon by him, but is merely retained for further consideration. The committee therefore recommend to the Senate the adoption of the following resolution:

*Resolved*, That the Committee on Foreign Relations be discharged from the further consideration of the memorial of Mrs. Anne M. Pinkney, widow and administratrix of William Pinkney, deceased, and that the same be referred to the President of the United States. (Leg. Jour., p. 271.)

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[See p. 696.]

## TWENTY-FOURTH CONGRESS, FIRST SESSION.

June 13, 1836.

On petition of Charles Ridgely, Mr. Clay reported as follows:

It appears that during the years 1820 and 1821, while Captain Ridgeley was in command of the American squadron on the Pacific Ocean, and when war was raging in Peru and Chile, the Spanish viceroy having been deposed sought a temporary refuge with his suite and attendants on board the U. S. frigate *Constellation*, under the command of Captain Ridgely.

That he incurred considerable expense in entertaining these guests; that, on other occasions, he received distinguished Spaniards on board his squadron, owing to the prevailing unsettled state of things, and whilst he was affording them a protection, dictated by humanity, and warranted by the amicable relations existing between the United States and Spain, incurred extraordinary expenses in entertaining them; and that Captain Ridgely performed other services, during his cruise, not falling within the strict line of duty.

While the committee believe that there may be occasions when, without a neglect of the duties of humanity (and some such occurred as above stated), the commanders of our squadron on distant service can not avoid incurring unnecessary expense, for which they ought to be remunerated, the committee think that these occasions ought to be always strictly examined, and that they should not be unnecessarily multiplied nor, at any time, made for useless parade, nor for laying the foundation of a subsequent claim for extra allowance. The committee does not intend to say that this was done by Captain Ridgely; on the contrary it has no reason to believe that he has done anything

which was not suitable to the case, the character of his country, and of his vocation.

The committee are of the opinion that Captain Ridgely ought to be remunerated for all expenses which he incurred in the instances referred to not arising out of the regular line of his official duty; but the committee possesses no adequate data upon which it could recommend to the Senate to make him the specific allowance to which he is entitled. This is the less necessary, as, in the opinion of the committee, it is competent to the Secretary of State or the Navy, out of the appropriations annually made for contingencies, to make him a just and proper allowance. The committee therefore propose the following resolution:

*Resolved*, That Captain Ridgely is entitled to a just remuneration for the extraordinary expenses incurred by him on the occasions herein alluded to, after they are ascertained by the proper accounting officers, and that as such remuneration may be made out of appropriations annually made, the Committee on Foreign Affairs be discharged from further considering the said petition.

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## TWENTY-FIFTH CONGRESS, SECOND SESSION.

January 22, 1838.

[Senate Report No. 123.]

Mr. Buchanan submitted the following report:

The Committee on Foreign Relations, to whom were referred the memorial and accompanying documents of Gen. Thomas Sumter, of South Carolina, report:

That although the documents are very voluminous, from the view which they have taken of the subject, there is but one important point for consideration, which they will endeavor to present in a distinct form to the Senate.

General Sumter was the minister plenipotentiary of the United States to Brazil from the 9th of July, 1809, until the 24th of July, 1819. Upon a settlement of his accounts on the 20th of June, 1821, after his return home, a balance was found against him of \$5,629.69.

Two claims made by him were rejected upon this settlement—the one for the sum of \$1,350, the amount of the salary of Mr. Lewis Pintard for the year 1810, under the act of May 10, 1800, and the other for the sum of \$17,631.28 for the salary of a secretary of legation under the act of May 1, 1810, at the rate of \$2,000 per annum, from the 1st of January, 1811, until the 24th of October, 1819. It is manifest that if these two sums had been allowed, the United States would have been largely indebted to General Sumter.

Your committee are clearly of opinion that the first sum of \$1,350 was correctly disallowed, and this claim is now abandoned by the memorialist.

From the 1st of January, 1811, until the close of General Sumter's mission there was no secretary of legation to Brazil. After the passage of the act of 1810 a commission was sent to Lewis Pintard, but he refused to accept it. General Sumter made several efforts to have the vacancy filled, but the President of the United States never complied with his request. It is manifest, then, that he had no legal right

to be allowed this sum of \$17,631.28 as the salary of a secretary of legation, and such was the decision of President Monroe on the 13th of June, 1821, in his letter of that date to the Secretary of State. After this decision the question immediately arose, which was suggested in this letter of the President. The memorialist contended, and still contends, that the Government at first by allowing him a secretary and afterwards by sending that secretary a commission as secretary of legation under the act of 1810 had recognized the necessity of such an officer, and that, in point of fact, from the various and pressing business of the legation he was obliged to incur expenses in having his duties performed equal in amount to his salary. Mr. Monroe certainly regarded this claim with favor, at least to the extent of \$1,350 per annum, as is evident from his letter to the Secretary of State, dated on the 29th June, 1821, a copy of which follows:

OAK HILL, *June 29, 1821.*

DEAR SIR: As I propose to set out for the city to-morrow, I shall notice in this that part of yours of yesterday only which relates to Mr. Sumter. In my former letter I objected to the payment to him of the salary of a secretary, not thinking it justifiable; but admitted, as well as I recollect, that he might have a just claim for advances which he might have made to those who rendered him the service of that kind. Since it is believed that he will have a well-founded claim for the sum which would have been paid to a secretary, I can see no objection to an allowance for the present of the sum which you mention; that is, for \$6,263.50. It will give me great pleasure to afford him every accommodation which the law and precedent will justify.

With sincere regard, yours,

JAMES MONROE.

General Sumter received from the Department of State the following notification of Mr. Monroe's decision:

DEPARTMENT OF STATE,

*Washington, June 30, 1821.*

SIR: I have great pleasure in stating to you, by direction of the Secretary of State, that the President consents to the advance requested by you of \$5,263.50. The claim on which it is grounded remains, at the same time, suspended for future decision.

With great respect, I am, sir, your very humble and obedient servant,

JOHN BAILEY.

THOMAS SUMTER, Esq.

On the 3d July, 1821, General Sumter receipted for this sum, as follows:

WASHINGTON, *July 3, 1821.*

\$6,263.50.

Received of Fontaine Maury, agent, the sum of \$6,263.50 on account and as late minister plenipotentiary of the United States at Rio de Janeiro, being the amount directed to be paid to me by the President of the United States, to be accounted for in the final adjustment and settlement of my accounts with the Treasury of the United States.

THOMAS SUMTER, Jr.

It will be observed that this sum of \$6,263.50 advanced by order of Mr. Monroe to the memorialist, added to the balance found due against him on the former settlement of his account of \$5,629.69 amount, together to the very sum, or within a dollar or two of it, of the salary of a secretary at the rate of \$1,350 per annum, the sum to which Mr. Sumter's secretary was entitled at the time he left the United States. Mr. Monroe states in his letter:

Since it is believed that he (Mr. Sumter) will have a well-founded claim for the sum which would have been paid to a secretary, I can see no objection to an allowance for the present of the sum which you mention; that is, for \$6,263.50.

The committee entertain no doubt but that considerable expenses were incurred by General Sumpter in procuring the services of a secretary, but to what amount it is impossible for them to say, because no vouchers have been produced from which it can be ascertained. In 1821, when all the facts of the case were fresh, it appears that Mr. Monroe thought these expenses, from the 1st of January, 1811, until the 24th October, 1819, would amount at least to the sum of \$6,263.50, more than the balance of \$5,629.69, which had been found against the accountant on the settlement of his account; otherwise he would not have ordered the payment to him of the former sum.

In fixing a proper estimate of the expenses which the memorialist must have incurred for the want of a secretary the committee have taken into consideration that when he departed from the United States upon his mission, the act of May 10, 1800, ascertaining the compensation of public ministers, was still in force, under which the salary of his secretary was \$1,350 per annum. Under this law the secretary was the secretary of the minister and not of the legation. General Sumpter has been perhaps the only minister plenipotentiary of the United States, since the act of 1810, who never had a secretary of legation; and from the great variety of consular and other business to which he was obliged to attend, independently of that which properly belonged to the mission, the committee believe that it would be reasonable to allow him at the rate of \$1,350 per annum, as an equivalent for the expenses which he incurred in procuring the services which would have been rendered by a secretary of legation, especially as this seems to have been the opinion of Mr. Monroe. They can not allow him his claim on this account for \$2,000 per annum because they deem it extravagant; notwithstanding it does appear, as he states, that he had authority to draw for \$11,000 per annum, which is equal to the salary of a minister and secretary of legation, although no secretary of legation had ever been appointed. He ought to have been governed in his expenses by the law and not by the amount for which he had authority to draw; and if he has incurred greater expenses on that account, he alone ought to be the sufferer.

But General Sumpter has brought forward other large claims for services rendered in performing consular duties at Rio, for a period of about seven years, for performing the duties of an agent for prisoners during the late war, and for other services, which need not be enumerated. The committee can not allow any portion of these. They have recommended the allowance of \$1,350 per annum for the very reason that he had many arduous duties to perform, requiring the aid of a secretary. To give him this sum, and in addition to it to pay him for performing the very services which this allowance was intended to cover, would be unreasonable. They therefore have considered it a matter of just and prudent precaution in making this allowance to stipulate that it shall be done on condition that he will execute a release to the Government of all claims and demands which he may have against the United States on any account whatever. This is required for the express purpose of preventing these old and intricate claims from again occupying the time and attention of Congress.

They therefore report the following bill.

(Leg. Jour., p. 162.)

## TWENTY-SIXTH CONGRESS, FIRST SESSION.

April 29, 1840.

[Senate Report No. 443.]

Mr. Allen made the following report:

The Committee on Foreign Relations, charged with the memorial of William D. Jones, have considered the matter of that memorial, and now report:

That in February, 1836, Mr. Jones was appointed from the United States as consul at the City of Mexico, repaired there, and entered upon his duties accordingly. About the 28th of December of the same year Mr. Ellis, the American chargé d'affaires at Mexico, left that court in obedience to the orders of the President of the United States, who deemed the conduct of the Mexican Government such as to make it his duty thus to suspend diplomatic intercourse between the two Governments. Prior to the departure of Mr. Ellis, the many acts of injustice committed upon the persons and the numerous confiscations of the property of American citizens in Mexico by the authorities, or by persons assuming to act under the authority of that Government, had been the subjects of unavailing negotiation. When it was known to them that Mr. Ellis was about to return to the United States, it was but natural that our citizens should feel an increased solicitude, not only about injuries left unredressed, but in apprehension of others to which they were now to be exposed in the absence of all present protection from their own Government. They therefore, it appears, made an appeal to Mr. Jones, who was also about to return to the United States, and by their importunities prevailed upon him to remain in Mexico in his character as consul. In this character Mr. Jones seems, from his very elaborate and voluminous correspondence with his own Government and with that of Mexico (the originals of which have been, by the Secretary of State, submitted to the committee), to have discharged all the duties which, had our chargé d'affaires remained, would have belonged to him; and to have discharged them, too, in a manner which, it would appear to the committee, must have been in the highest degree beneficial to our citizens there and satisfactory to our Government. He continued to discharge these duties from the departure of Mr. Ellis from Mexico, about the 28th of December, 1836, until Mr. Ellis returned there and was accredited as minister, about the 7th of July, 1839, being a period of two years six months and ten days.

The committee are therefore unanimously of opinion that Mr. Jones should be allowed the salary of a chargé d'affaires for the time he was so engaged. Such, it is believed, has been the uniform practice of the Government in like cases; and the committee therefore submit the following resolution:

*Resolved*, That this report be referred to the Committee on Finance.

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WASHINGTON, March 4, 1840.

SIR: I take the liberty of requesting that you will be pleased to lay before the Committee on Foreign Affairs the subject of my claim upon our Government for diplomatic services at Mexico while consul of the United States at that place, from the time that Powhatan Ellis, esq., left that capital, say on the 28th of December, 1836, until his return and being accredited as the minister of the United States by that Government, on the 7th of July, 1839.

The duties devolving upon me during that period—over two years and a half—as sole agent of our Government were arduous and highly responsible, involving the interests and rights of our countrymen for spoliation and outrages committed against them in that country, requiring my unremitted labors and correspondence with that Government and the assistance of a person in the office as a translator and clerk to enable me to discharge its duties, the extent and nature of which the archives in the Department of State will, I am persuaded, satisfy the committee, as also of the merits of my pretensions.

I beg leave, sir, to remark that, in addition to my unremitted efforts in behalf of my countrymen residing in that Republic, I lost no opportunity to make a favorable impression on the minds of the Mexican authorities and people in favor of our country and its institutions and of the great importance to both countries to have the differences unhappily existing between them amicably adjusted, and the most friendly relations cultivated between them.

These efforts, sir, I flatter myself, were not without their influence in bringing about the conventional treaty for the friendly adjustment of our differences with Mexico by commissioners.

Without trespassing further in this communication upon your time, I most respectfully beg leave to refer the Committee on Foreign Affairs to the files of the Department of State, hoping that on a full examination of the merits of my claim the Committee on Foreign Affairs will feel fully authorized to report favorably on the same, and make me the usual allowance and pay of a diplomatic agent under such circumstances. I ought to add, in justice to myself, that my stay at Mexico has been attended with heavy expense, my perquisites as consul being of scarcely more than a nominal amount. From this consideration I should have returned much sooner to the United States had it not been for the absence of any regular diplomatic agent of our Government near that power whose interposition could be invoked for the protection of our resident countrymen in their persons and property, and who earnestly solicited my continuance until the diplomatic relations of the two Governments could be resumed. As an evidence of their sense of the value of these services and of their personal regard, I beg leave to accompany this communication with a copy of a letter from a portion of them addressed to me on the eve of my leaving that capital for the United States. A copy of the same, it is believed, will be found in the Department of State.

I have the honor to be, very respectfully, your obedient servant,

W. D. JONES.

Hon. BENJAMIN TAPPAN,  
*United States Senate.*

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June 3, 1840.

[Senate Report No. —.]

Mr. Buchanan made the following report:

The Committee on Foreign Relations, to whom was referred the bill from the House of Representatives entitled "An act for the relief of Alexander H. Everett," report:

That this bill allows to Mr. Everett the sum of \$958.32 for office rent at Madrid from the 1st October, 1825, till 31st July, 1829, while he was the minister of the United States at Spain. The office was rented for the use of the legation at the rate of \$250 per annum, and the rent was charged in Mr. Everett's accounts against the Government, but it was disallowed by the Department of State.

Mr. Everett alleges that he rented the office under the belief that the Government would pay the rent, founded on a knowledge of the fact that similar allowances had been made to our ministers in London and Paris, and the committee entertain no doubt of the truth of this allegation. The committee, notwithstanding, do not feel themselves authorized to recommend the passage of the bill.

It is true that since 1817 the ministers of the United States at London, and since 1822 our ministers at Paris, have been allowed office rent, though it may be well doubted whether this allowance is sanc-

tioned by the act of May 1, 1810. That act is clear and explicit in its terms. It expressly provides "that the President of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of \$9,000 per annum as a compensation for all his personal services and expenses," and Mr. Everett was bound to know its provisions. The committee believe that it is a necessary expense of the minister to provide himself an office where the business of his legation may be transacted, and that under no fair rule of construction can office rent be considered a contingent expense of the mission. These contingent expenses are intended to embrace only the postage on dispatches, letters, etc., and other incidental and uncertain expenditures. The allowance for office rent in London and Paris has doubtless been made on account of the great expense of living in these cities and the large amount of business to be transacted there. It has never been extended to any of the other ministers of the United States, and the question now is whether Congress shall for the first time establish such a precedent.

All our ministers and chargés have undoubtedly paid office rent in the different countries to which they have been accredited, some under the general denomination of house rent and others for offices separate from their houses. Indeed, similar claims have already been advanced by other ministers to Madrid. If this allowance should be made to Mr. Everett it would be difficult to conceive upon what principle the money expended for the same purpose by all others in a similar situation could be withheld by the United States. His mistake, arising from a very questionable practice under the law at London and Paris, could afford no just ground of discrimination. The committee would much rather limit than extend this practice, and therefore they recommend the indefinite postponement of the bill.

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[See pp. 644, 649.]

## **TWENTY-NINTH CONGRESS, FIRST SESSION.**

**March 3, 1846.**

[Senate Report No. 186.]

Mr. Sevier made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of the heir and legal representative of the late William A. Slacum, deceased, report:

That it appears by the documents filed in this case that the late William A. Slacum was commissioned by President Van Buren, through his late Secretary of State, Mr. Forsyth, by his letter dated 11th November, 1835, "to obtain some specific and authentic information in regard to the inhabitants of the country in the neighborhood of the Oregon or Columbia River, and generally all such information in that region—political, physical, statistical, and geographical—as might prove useful or interesting to this Government."

That in pursuance of this commission Mr. Slacum did, in the year 1836, proceed to the Oregon Territory, and there fulfilled his instructions, and in the year 1837 reported the results of his labors in his narrative, addressed to Secretary Forsyth, filed among the papers, marked B.

The claim for repayment of expenses incurred and paid for the use and benefit of the Government is founded upon the following facts:

That not being able to procure a vessel to convey him from the west coast of Mexico, where he commenced to perform his mission, up the coast to the Columbia River, on the 1st June, 1836, Mr. Slacum provided himself with mules, provisions, and servants to perform the land journey to Oregon; but owing to the difficulties and dangers of the route at that season of the year (especially the scarcity of water), he was obliged to abandon it and proceed by sea via the Sandwich Islands. The expenses attending these preparations, loss on resale of mules, etc., and pay of servants, amounting to the sum of \$135, make the first item of his claim. The committee think this item is reasonable and ought to be allowed.

The second and third items are for freight and insurance paid by Mr. Slacum on \$3,000 in specie, of his own proper funds, conveyed with him to pay his expenses, and all of which was devoted to the use of the United States, and for interest on \$3,231 of his own funds, paid by him in expenses incurred solely for the use of the Government as admitted in the settlement of his accounts at the Treasury Department. The interest claimed is on this amount from the time he so applied it till it was repaid to him at the settlement of his accounts upon his return to this city. These items together amount to the sum of \$380, which the committee think ought to be allowed.

The item claimed for expenses of servant from Mexico to this city the committee think ought not to be allowed, because they believe Mr. Slacum could have dispensed with his services.

The item claiming the amount distributed in presents to Indians and others for facilities in aid of his duties the committee think is reasonable and ought to be allowed. It amounts to \$198.

The claim for expenses is comprised in the above items.

The memorialist also prays "such compensation for his services as the Congress may deem them to merit."

Although no remuneration for services was promised to Mr. Slacum by the President, yet the committee think it reasonable and just that some compensation should be allowed on this account. Mr. Slacum appears to have performed his mission with dispatch and fidelity. It was a duty attended with much privation, exposure, and peril; it was performed during the most inclement season, and your committee believe it was fruitful of much valuable information to this Government and of great benefit to our citizens inhabiting that territory.

They have reason to believe that the Secretary of State (Mr. Forsyth), under whose auspices this mission was performed, was well satisfied with its results, and regretted that he had not the power to make Mr. Slacum a suitable compensation for his labors. Nothing has ever been paid to Mr. Slacum or his representative on account of compensation.

In fixing a measure of remuneration your committee refer to the practice in the Department of State, and find that a bearer of dispatches to Europe is allowed \$6 per diem, and all expenses paid from this city until his return. They think that the nature of Mr. Slacum's services entitled him, at the least, to this amount, but his per diem is claimed to commence only from his departure from California, and not from this city, as is customary.

But Mr. Slacum's memorial states that he was during his mission to Oregon a purser in the Navy of the United States. He was bound, in consideration of his official pay, to render his services to his country, but inasmuch as his mission to Oregon was not in the tenor of

his duties as purser, your committee think his pay as such was not a fair and reasonable compensation for those services. There are many precedents in the legislation of Congress for allowing extra compensation to officers of the Army and Navy for extra services performed even in the sphere of their official duties. Your committee would instance, among others, the case of the officers of the late exploring expedition. But the amount of official pay received by Mr. Slacum during the time he was engaged in his mission to Oregon your committee think ought to be deducted from the sum allowed for compensation.

With this report your committee submit a bill, drawn in conformity to its conclusions.

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July 8, 1846.

[Senate Report No. 422.]

Mr. Archer made the following report:

The Committee on Foreign Relations, to whom has been referred the memorial of Joshua Dodge, asking compensation for services rendered as tobacco agent for the Government in Germany and Italy, in addition to the allowances which have been paid him, have had the same under consideration and report:

That from information derived from the Department of State it appears that the said Dodge, in virtue of appointments from the Executive, under the authority of resolutions of the two Houses of Congress, was employed to visit Germany and Italy for the purpose of negotiating for the advancement of the commerce in tobacco of the United States in places in which the Government had no minister accredited.

These appointments were three in number, the first commencing the 6th June, 1837, and terminating the 1st December, 1839; the second, the 21st September, 1840, and terminating September 21st, 1841; the third, the 9th May, 1843, terminating May 9, 1844. The compensation allowed, by arrangement with the memorialist, was for the first mission at the rate of \$2,500 per annum for salary and \$500 for traveling expenses; and he was permitted to retain and discharge by deputy the consulate at Bremen, of which he was the incumbent. This consulate previously, a short time, to the expiration of the mission—that is to say, on the 5th of August, 1839—he appears to have resigned, and the sum at which he estimates its net proceeds is put down at \$500 per annum. The allowance stipulated for the second mission was \$3,000 for salary and \$500 for contingencies. For the last mission the allowance was \$4,000 for salary and all expenses.

It appears that these several appointments of Mr. Dodge were induced on the part of the Executive by earnest recommendations of committees of conventions of tobacco planters assembled in this city, and of representatives of the tobacco interest in Congress. From these testimonials and the evidence of his various reports to the Department it is apparent that Mr. Dodge discharged faithfully and diligently his duty by collecting valuable and multifarious information on the subject of the legislation of many of the German States on the subject of tobacco and the state of the traffic in that important article. A digest or compilation of a portion of this information was printed by order of Congress and circulated very extensively, and ought to be deemed of much value.

At the same time with the appointment of Mr. Dodge to his first mission a commission of identical character seems to have been given to Mr. Nathaniel Niles to visit Austria, and on the appointment of a minister to that court, a second one to visit Sardinia for the same purpose. Mr. Niles did not return to the United States in the interval of his missions, as Mr. Dodge was obliged to do, by recall in the first instance and the expiration of the period limited by the Executive for the continuance of his service in the succeeding missions. Mr. Niles, like Mr. Dodge, had a specific compensation assigned him at the outset of his service.

On the return of Mr. Niles to the United States, having been successful in the negotiation of a treaty with Sardinia, he obtained an act of Congress (21st July, 1840) by which he was allowed to settle his accounts with the Government "as though he had been regularly commissioned as a *chargé d'affaires* to Sardinia," deducting the payments which had been made to him in his character of "special agent to Austria and Sardinia."

Mr. Dodge having visited a larger number of States (as he alleges, 38), having been exposed in consequence to much larger expenses, although he made no treaty, now asks to be allowed to settle his account in the same form in which Mr. Niles has been permitted to settle his; that is to say, with the allowance of the compensation of a *chargé d'affaires*, in place of that of special agent, during the several periods of time during which he was in the actual employment of the Government, and the allowance of outfit and infit, with deductions of all the advances or allowances to him in the latter character.

The committee think the application under the circumstances not unreasonable, as far as relates to an additional compensation for the contingent and other expenses of the petitioner in prosecution of his service as the special agent of the Government, the allowance made by the Executive for that object being manifestly inadequate. The allowance of outfit and infit, such as would be paid to a *chargé d'affaires*, the committee do not regard in the same favorable light. They report, in pursuance of these views, for the relief of the petitioner.

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## TWENTY-NINTH CONGRESS, SECOND SESSION.

January 19, 1847.

[Senate Report No. 81.]

Mr. Cass made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of William M. Blackford, respectfully report:

That the memorialist was appointed *chargé d'affaires* to New Grenada in February, 1842; that in June, 1844, he was, upon his own request, granted leave of absence by the Department of State; and that in December following, as soon as he received this permission, he left Bogota for the United States, after a residence there of about two years and a half. He was allowed his salary as *chargé* till the 18th of June, 1845. He now applies to Congress to be allowed the extra quarter's salary usually granted to returning foreign ministers and *chargés*.

This allowance has become the settled practice of the Government,

though there is no law to which its origin can be traced. The rule is that the salary ceases the day the diplomatic agent takes leave of the Government to which he is accredited, and he is then allowed a quarter's salary in addition, generally called an *infilt*, to provide for his expenses in returning home. The practice seems to the committee equally proper and just. It precludes all questions about the time or expense of the journey home, and furnishes some equitable compensation for the loss to which this class of officers is necessarily exposed in breaking up their establishment in a foreign country.

Had Mr. Blackford been recalled or resigned at Bogota his salary would have ceased the day he left there, which was between the 17th and the 24th of December, 1844. He would then have been entitled to his return quarter salary for his expenses home; but instead of this he received a half year's salary after the termination of his mission. The committee think that he has been liberally settled with by the Department of State, and that as he was in the United States when his functions ceased, he ought not to be allowed any compensation for returning. He had already received double the sum he was entitled to had his mission terminated while he was at his post.

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[See p. 671, 684.]

**THIRTIETH CONGRESS, FIRST SESSION.**

**July 28, 1848.**

[Senate Report No. 217.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of George L. Brent and Joseph Graham, praying compensation for services as special agents to Paraguay, have had the same under consideration, and report:

It appears from the memorial and accompanying documents that the petitioners, one of whom was the consul at Buenos Ayres and the other the son of the *chargé d'affaires* of the United States at the same place, were sent by the then functionary from Buenos Ayres to Paraguay, the object of the mission being to offer the mediation of the American legation, with the assent and approbation of the Argentine Confederation, to adjust the hostile relations then subsisting between that confederation and the province of Paraguay.

The object of this mission was one of great importance to the commercial interests of the United States, and in the opinion of the committee was properly instituted by the American minister in the exercise of a sound discretion; and as appears from a letter of the Secretary of State, which accompanies the report, was productive of useful and valuable results to the country.

The journey of the petitioners was long, arduous, and, from the hostilities then pending, was one of imminent peril, and the distance to be overcome through this dangerous country from 1,500 to 1,800 miles. Nothing was advanced to the memorialists even for their expenses, and your committee deem it just that they should be compensated as in such cases is usual.

The memorialist Graham, on his return to Buenos Ayres, resumed his functions as consul, and his compensation is limited to the time during which absent, being one hundred and seventy-five days.

The memorialist Brent on his return to Buenos Ayres found that the American chargé had returned home, thus depriving him of his former resource in his father's house. The blockade of the port and the unsettled state of the country detained him abroad for some time seeking an opportunity to return home, which he eventually did by going to Montevideo and thence to the United States. For this detention, and to cover the expense incident to it, the committee are of opinion that he should be allowed a reasonable compensation.

The letter of Mr. Buchanan shows that compensation to the agents of Government has been allowed at the rate of \$8 per diem, together with necessary traveling expenses. The memorialists in their accounts have charged only the sum of \$70 each for his expenses, that being the sum it cost them, as it appears, whilst detained at the capital of Paraguay. Their traveling expenses through a wild and unsettled country, part of which was done in a vessel chartered for the purpose, were necessarily long, and your committee assume shall be covered by the per diem allowance.

They are of opinion, therefore, that each should be allowed the sum of \$8 per day for the one hundred and seventy-five days employed until their return to Buenos Ayres, with one-half of that sum to Mr. Brent for the additional one hundred and sixty-five days' detention on his way to the United States, and they report a bill accordingly.

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### THIRTY-FIRST CONGRESS, FIRST SESSION.

January 29, 1850.

[Senate Report No. 26.]

Mr. King made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Abigail Shaler Stillwell, legal representative of William Shaler, deceased, have had the same under consideration, and report:

That William Shaler, who had for many years discharged the duties of consul of the United States at Algiers to the entire satisfaction of his Government, asked and obtained permission to return to the United States for the improvement of his health, which had been greatly impaired. This permission was given by the Secretary of State, with the express understanding that Mr. Hodgson should be left in Algiers to discharge the consular duties during Mr. Shaler's absence without expense to the Government, and that he (Mr. Shaler) should continue to receive his salary. In 1828 Mr. Shaler returned home, and in 1829 resigned his office as consul at Algiers and received the appointment of consul at Habana, in the island of Cuba. In the settlement of his accounts Mr. Shaler claimed a quarter's salary, which had, by the uniform practice of the Government, been allowed to meet the expenses of consuls to the Barbary powers in returning to their homes at the expiration of their service. The Secretary of State refused to make the allowance asked for, upon the ground that Mr. Shaler was at home at the time of his resignation and received his salary from the time he left Algiers until his resignation was accepted. The committee, appreciating as it does the valuable services of Mr. Shaler, is constrained to come to the conclusion that the Secretary of State decided correctly. They report the following resolution:

*Resolved*, That the prayer of the memorialist be rejected.

[See p. 649.]

February 18, 1850.

[Senate Report No. 61.]

Mr. Mangum made the following report:

The Committee on Foreign Relations, to whom was referred the petition of the legal representative of William A. Slacum, deceased, report:

That upon a review of the case they see no reason to dissent from the conclusion of the report made from the Committee on Foreign Relations upon the same subject on the 3d of March, 1846, but adopt the same and report a bill in conformity therewith.

[See Senate Report No. 186, Twenty-ninth Congress, first session, p. 638.]

April 25, 1850.

[Senate Report No. 111.]

Mr. King made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Albert Fitz, praying compensation for services as special agent of the Government to the West India Islands, have had the same under consideration, and report:

The committee have not been able to obtain any reliable information as to the extent of the duties performed by Mr. Fitz, there being nothing on file in the State Department showing the nature of the services rendered by him. That they were performed to the satisfaction of the Government is to be presumed, as the accounts of Mr. Fitz were settled by the Department, and an allowance made him for his expenses of \$1,266, and for his per diem from the 1st of October, 1841, to the 1st of August, 1842, \$1,824, being at the rate of \$6 a day, making together \$3,090. The accounts of Mr. Fitz having been settled by those who understood all the circumstances of his case, and an allowance made which was believed to be just, the committee can see no good reason for disturbing the settlement thus made, and report the following resolution:

*Resolved*, That the prayer of the memorialist be rejected.

[See p. 662.]

### THIRTY-SECOND CONGRESS, FIRST SESSION.

February 26, 1852.

[Senate Report No. 97.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Lieut. W. D. Porter, of the Navy of the United States, praying that he may be reimbursed for expenses incurred by him in bringing to this country Amin Bey, of the Turkish navy, in the year 1850, have had the same under consideration, and respectfully report:

From the petition and the documents accompanying it, it is shown that Lieutenant Porter, then at Genoa, in the command of the United

States storeship *Erie*, and about to return home, received a letter from the Hon. George P. Marsh, minister resident of the United States at Constantinople, dated the 20th of May, 1850, requesting Lieutenant Porter to receive Amin Bey and his attendants on board his ship, and to bring them to the United States; in which letter the minister says that the visit was made on the suggestion of the American legation, and under the proffer of a free passage for Amin Bey and his attendants in any public ship of the United States about to return home; and further, that he doubts not the "Government will reimburse you for any expense to which you may be subjected by affording him a passage."

In compliance with this request, Amin Bey, with his attendants, including Mr. John P. Brown as dragoman, were received on board the *Erie* at Genoa on the 5th of July, and landed at New York on the 13th of September, 1850.

The mission was treated as one of sufficient consequence to the United States by our minister at the Turkish court to warrant the responsibility he assumed in giving the invitation and tendering a passage in a public ship, a step fully justified by Congress in the appropriation subsequently of a large sum of money to defray the expenses of Amin Bey while in this country.

The committee are satisfied from their inquiries that the peculiar national habits of this guest of the ship *Erie* must have subjected its commander to expenses exceeding those of an ordinary guest having a like retinue; and although far the larger part of the expenditures made are sustained by vouchers, yet they deem it just to admit some of the charges for which, under the circumstances, strict vouchers could not be obtained. The amount claimed by Lieutenant Porter for his actual expenses thus incurred is the sum of \$1,848.61, and they report a bill for payment thereof.

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[See p. 654.]

March 29, 1852.

[Senate Report No. 157.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Catharine Crosby, as one of the heirs of Thomas D. Anderson, late consul of the United States at Tripoli, have had the same under consideration and respectfully report:

It is alleged in the petition that said Anderson, while in the discharge of his duties as consul, contracted a disease of the eyes, by which he was deprived of vision, and in consequence thereof was unable to procure and preserve the vouchers for the contingent expenditures of his consulate during the last five or six years that he remained in office, and that from the want of the usual and proper vouchers, no credit was given him for such expenditures by the proper accounting officers of the Treasury from the 31st December, in the year 1821, to the 27th August, 1827.

From the report of the Fifth Auditor, under date of the 24th November, 1847, which accompanies the papers, it appears that a claim was preferred at the Treasury by the representatives of Mr. Anderson for an average allowance on account of such expenditures during the period referred to, which, on being referred to the Secretary of State

[Mr. Livingston], he advised the Auditor, by letter of 21st June, 1832, that "the President directs that the representatives of Mr. Anderson must have recourse to Congress for the allowance of that part of the contingent account unsupported by vouchers."

The committee, for further information, again referred the subject to the Secretary of State with a view to ascertain up to what period during the consulate of Mr. Anderson an allowance for contingent expenses had been made, and also what had been the average annual allowance for such expenditures made to the predecessors and successors of Mr. Anderson in the said consulate, and they subjoin the report of the Fifth Auditor, dated 16th March, 1852, rendered to the committee on such reference:

*Memorandum of allowances which have been made at the Treasury for the contingent expenses of the United States consuls at Tripoli from 23d July, 1812, to 30th September, 1833, and the annual sum to each.*

To Richard B. Jones, consul, from July 23, 1812, to June 24, 1820— nearly 8 years .....	\$5,952.43
Average per annum .....	744.05
To Thomas D. Anderson, consul, from August 17, 1819, to December 31, 1821—2 years, 4 months, and 17 days .....	2,793.00
Average per annum .....	1,197.00
To Charles D. Cox, consul, from January 1, 1822, to September 23, 1830— 3 years and nearly 9 months .....	2,800.00
Average per annum .....	746.66
To Charles J. Cox and Ebenezer J. Ridgeway, who acted as consuls after the death of Charles B. Cox until the arrival of Daniel S. McCawley, from October 1, 1830, to May 29, 1832—1 year and nearly 8 months, \$79.50 and \$415 .....	494.50
Average per annum .....	296.70
To Daniel S. McCawley, consul, from July 1, 1832, to September 30, 1833—1 year and 3 months .....	740.00
Average per annum .....	592.00

TREASURY DEPARTMENT,  
*Fifth Auditor's Office, March 16, 1852.*

It appears from this report that no such allowance was made to Mr. Anderson after the 31st December, 1821; that for the two years and four months he was in office up to the 31st December, 1821, the average annual allowance to him for such expenses was \$1,197 per annum, but that the allowance to his predecessor and immediate successor averaged about \$745 per annum.

The committee have adopted the last average as that which would seem most likely to be just to the Government and not inequitable to the claimant, and they recommend such allowance for five years, from the 31st December, 1821, to the 31st December, 1826, at which time, as appears from the last-named report of the Auditor, an account commenced with Mr. Anderson's successor, and they report a bill accordingly.

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[See p. 674.]

May 12, 1852.

[Senate Report No. 218.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Joseph Balestier, has had the same under consideration, and now report:

That the petitioner, having resided for many years at Singapore, in

the East Indies, as consul of the United States, returned home in the year 1849 and tendered a resignation of his office on the ground that its emoluments were not adequate to the expenses it involved.

While thus in communication with the Department of State, it was determined by the President to send a special agent to the East Indies and to various parts of southern Asia for purposes fully set forth in a letter from the Secretary of State to Mr. Balestier, dated August 16, 1849, accompanying the petition, and the latter gentleman was selected for that service.

The peculiar qualifications of Mr. Balestier for these duties, resulting from an intimate acquaintance with the countries he was to visit and the fidelity and ability with which he had served the Government while consul at Singapore, are fully admitted in the correspondence of the Department, and it would appear that Mr. Balestier was induced to accept this new service upon a representation that it would be recommended to Congress to place the consulate at Singapore on such footing in regard to salary as would enable him to remain there as consul when his special mission should be ended.

By his letter of appointment, above referred to, Mr. Balestier was to be paid at the rate of \$4,500 per annum while so employed, and in addition his "traveling and other necessary expenses" were to be allowed him.

While on this special mission the agent was to be conveyed to the various points indicated in his letter of instructions in some of the public vessels in those seas.

It appears, further, from the correspondence of the Department that after concluding a convention of "friendship and trade" with the Sultan of Borneo, Mr. Balestier was landed in China from the *Plymouth*, under an arrangement with Commodore Voorhees that after replenishing his supplies he would again put to sea with him with a view to the completion of his mission, but before being ready to do so that ship was unexpectedly recalled home.

By letter of May 16, 1850, Mr. Balestier was informed by the Department of State (the *Plymouth* having returned home) that the steamer *Jamestown* would be ordered to receive him on board and to proceed with him to the completion of his mission; and while waiting at Batavia her arrival he received a letter from the Department terminating his mission, and informing him that his salary would cease after a reasonable time (fixed by the letter at little more than sixty days) allowed for the dispatch to reach him.

Thus his salary was made to cease on the 20th April, 1851, and he claims that it should be paid him from that date until his arrival in the United States, together with his traveling expenses home.

It appears to the committee that although at the time of Mr. Balestier's departure on this special mission it was intended that at its close he should remain at Singapore and resume his duties as consul, yet that such intention was based upon the expectation on both sides that the consulate would in the meantime be made a salaried office. Such not being done, he returned home as speedily as circumstances would admit.

The committee are satisfied that all the duties required of the agent were discharged by him with zeal and fidelity and entirely to the satisfaction of the Government, and they recommend, therefore, that he be allowed the continuance of his salary as claimed, and his traveling expenses back to the United States, and report a bill accordingly.

## THIRTY-THIRD CONGRESS, FIRST SESSION.

February 14, 1854.

[Senate Report No. 105.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Harriett D. P. Baker, widow, and the children of John M. Baker, late consul at Rio de Janeiro, praying compensation for diplomatic services alleged to have been performed by her said husband, from the 11th April, 1834, to the 16th February, 1835, having had the same under consideration, respectfully submit the following report:

It appears from a letter of the Secretary of State, dated February 8, 1854, that Mr. Brown, late chargé d'affaires of the United States at Rio de Janeiro, upon the eve of his return to the United States, 8th April, 1834, under instructions from the Department of State, placed the property of the legation in the care of Mr. Baker, then consul of the United States at that port, at the same time stating to him "that he must not consider himself authorized to enter into diplomatic correspondence with the Government of Brazil or expect compensation as a diplomatic agent." "That no correspondence of a diplomatic character ever passed between the Department of State and Mr. Baker, or between him and the Brazilian Government, during the interval between the departure of Mr. Brown and the arrival of his successor Mr. Hunter." And further, that on the 31st May, 1838, the sum of \$265.54 was paid by the Department to C. J. Nourse, assignee of J. Martin Baker, on account of the safe-keeping and removal of the books, archives, and furniture of the legation during the above-mentioned period.

Under these circumstances your committee can not perceive any just claim against the Government on the part of the petitioners, and therefore recommend that it be rejected.

February 14, 1854.

[Senate Report No. 106.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of E. Ritchie Dorr, late United States consul at Buenos Ayres, praying compensation for diplomatic services alleged to have been performed by him from the 27th November, 1834, to the 31st August, 1838, having had the same under consideration, respectfully submit the following report:

It appears from the correspondence between Mr. Dorr and the Department of State that shortly after his appointment and during the continuance of his consulate at Buenos Ayres he was not only not authorized to perform any diplomatic functions, but expressly instructed to abstain from so doing. That for "diplomatic interference," in disregard of those instructions, "the President considered his conduct so exceedingly improper as to render it necessary for him to mark his displeasure by appointing a new consul at that port." And further, that while performing the duties of consul he was not the keeper of the archives of the United States legation to the Argentine Confederation, they having been previously brought home by Mr. Bayliss, late chargé d'affaires of the United States to that Government when the legation was broken up.

Under these circumstances your committee can not perceive any principle, either of justice or sound policy, which would authorize the allowance of this claim, and therefore recommend that it be rejected.

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[See p. 644.]

**March 2, 1854.**

[Senate Report No. 144.]

Mr. Weller submitted the following report:

The Committee on Foreign Relations, to whom was referred the petition of the legal representatives of William A. Slacum, deceased, having had the same under consideration, report:

That, concurring in the report made from the Committee on Foreign Relations upon the same subject on the 3d of March, 1846, and reaffirmed on the 18th of February, 1850, they adopt the same, and report a bill in conformity therewith.

[See Senate Report 186, Twenty-ninth Congress, first session, p. 638.]

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[See pp. 698, 764.]

**March 2, 1854.**

[Senate Report No. 146.]

Mr. Weller made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Frances Ann McCauley, having had the same under consideration, report:

That at the last session of Congress this case was referred to the Committee on Foreign Relations, and, after full consideration of its merits, upon their recommendation an item was inserted in the "act making appropriation for the civil and diplomatic expenses of government for the year ending 30th June, 1854," which provides "that in settling the accounts of Daniel S. McCauley, late consul-general at Alexandria, Egypt, there shall be allowed, for office rent, at the rate of \$400 per annum during the time he acted in that capacity, to be paid to his widow."

The compensation thus provided for, amounting, as stated in the memorial, to \$1,600, was designed and intended as a full and final settlement of the claim, and upon a careful review of the case the committee see no reason to dissent from the opinion then entertained and acted upon, and therefore ask to be discharged from its further consideration.

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**March 16, 1854.**

[Senate Report No. 172.]

Mr. Everett made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of John Bozman Kerr, late chargé d'affaires to the Republic of Nicaragua, have had the same under consideration and submit the following report:

The memorialist represents that on the 12th of March, 1851, he was commissioned as chargé d'affaires to the Republic of Nicaragua, and that he was further instructed by the President, under two other commissions bearing date the 24th of May of the same year, to go to the seat of the governments of San Salvador and Guatemala for the purpose of exchanging the ratifications of the treaties which had been negotiated with those States. Having repaired to Leon de Nicaragua, the capital of that Republic, he left his family there to execute his instructions at San Salvador and Guatemala, to the Governments of which, for the purpose just named, he was also specially accredited. The performance of this duty required a journey of 1,500 miles under circumstances of great hardship, privation, and danger, owing to the want of roads and other facilities for traveling and the disturbed state of the country.

In addition to these official duties Mr. Kerr was accredited by a separate commission to the "national representation of Central America," a species of confederation which sprung up in 1851 and which, owing to the unsettled and revolutionary character of the times, called upon him for the performance of arduous and delicate duties. The committee have reason to think that at considerable personal risk and under circumstances of an embarrassing nature it was the good fortune of Mr. Kerr, while he maintained the honor of his own Government and protected the interests of his countrymen in Central America, to mitigate on more than one occasion, by friendly interposition, the horrors of civil war.

It may be proper to take into consideration that at the time when Mr. Kerr was appointed as chargé d'affaires to Nicaragua the establishment of a full mission to Central America had been recommended by the Department of State to Congress, and it was intimated to Mr. Kerr that if that mission prevailed he would probably be nominated by the President as envoy extraordinary and minister plenipotentiary. It appears from the foregoing sketch of his duties, under the several commissions successively received by him, that he was accredited to nearly all the Central American States, and, in point of fact, he transacted business with the Governments of all of them.

Mr. Kerr has hitherto been compensated only as chargé d'affaires to Nicaragua. The accounting officers of the Treasury, it is understood, are authorized to allow his expenses on the journey to San Salvador and Guatemala, but not including the expenses while residing at those capitals.

The committee are of opinion, under the circumstances of the case, that precedent and equity warrant a more liberal principle of compensation. Considering that he was obliged to leave his family at Leon while absent himself on the arduous journey to the capitals of San Salvador and Guatemala, the committee think him entitled to the expenses of the journey and of his residence in those cities; while his commission to "the national representation of Central America" entitles him to a full outfit to that Government. Several similar cases are found in our diplomatic history, of which that of Mr. Donelson is the most recent and most closely analogous. This gentleman, being minister plenipotentiary at Berlin, was commissioned in the same character to the Central Germanic Government at Frankfort and under that commission allowed a full outfit.

The committee, accordingly, report a bill allowing to Mr. Kerr his expenses as above stated and a full outfit as chargé d'affaires to "the national representation of Central America."

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The undersigned, a citizen of Maryland, begs leave most respectfully to represent: That on the 12th day of March, 1851, he was commissioned by His Excellency the President of the United States as chargé d'affaires to the Republic of Nicaragua, and being so accredited, he was further required by the President, under two other distinct commissions of the treaty 4th day of May following, to go to the Republics of San Salvador and Guatemala. These journeys, from Leon de Nicaragua, where his family continued to reside, to and from the respective capitals of San Salvador and Guatemala (about 1,500 miles), were made amidst hazards and privations in Central America, unavoidable to the best guarded traveler; but the instructions of the Government were carried out.

Your memorialist also represents that, in view of an alleged control over the foreign relations of Honduras, San Salvador, and Nicaragua on the part of a body styled "the national representation of Central America," he had received a letter of credence thereto, bearing date the 20th day of November, 1851, and that under new relations, during factious tumults throughout the several States, he was called to delicate points of duty. The theater of negotiation was here changed and enlarged.

Entitled to remuneration commensurate with diplomatic services, apart from and beyond those to which his commission as chargé d'affaires to Nicaragua limited him, your memorialist asks such relief as may seem just and proper, in the nature of outfits, heretofore indicated, as the least objectionable mode of securing suitable recompense to a minister stationed in one republic and sent in like official character to others.

He begs leave to add that the subject-matter of this memorial has been withheld from final adjustment at the State Department, as, from the peculiar circumstances attending the claim, it could be settled only by Congress.

All of which is most respectfully submitted.

JOHN BOZMAN KERR.

EASTON, MD., December 20, 1853.

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MILLARD FILLMORE, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all persons whom these presents shall concern, greeting:*

Know ye, that, reposing special trust and confidence in the integrity and prudence of John B. Kerr, accredited as chargé d'affaires of the United States to the Republic of Nicaragua, I have authorized, and by these presents do authorize, and empower him to exchange with any person duly authorized on the part of the Government of the Republic of San Salvador my ratification for the ratification of the chief magistrate of that Republic of the general treaty of amity, navigation, and commerce between the United States and that Republic, signed in the city of Leon on the 2d day of January, in the year of our Lord 1850.

In testimony whereof I have caused the seal of the United States to be hereto [L. s.] affixed.

Given under my hand at the city of Washington, the 26th day of May, in the year of our Lord 1851, and in the seventy-fifth year of the Independence of the United States.

MILLARD FILLMORE.

By the President:

W. S. DERRICK,  
*Acting Secretary of State.*

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MILLARD FILLMORE, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all persons whom these presents shall concern, greeting:*

Know ye, that, reposing special trust and confidence in the integrity and prudence of John B. Kerr, accredited as chargé d'affaires of the United States to the Republic of Nicaragua, I have authorized, and by these presents do authorize, and empower him to exchange with any person duly authorized on the part of the Government of the Republic of Guatemala my ratification for the ratification of the chief magistrate of that Republic of the general convention of peace, amity,

commerce, and navigation between the United States and that Republic, signed in the city of Guatemala on the 3d day of March, in the year of our Lord 1849.

In testimony whereof I have caused the seal of the United States to be hereunto [L. s.] affixed.

Given under my hand at the city of Washington the 26th day of May, in the year of our Lord 1851, and in the seventy-fifth year of the Independence of the United States.

By the President:

MILLARD FILLMORE.

W. S. DERRICK,  
*Acting Secretary of State.*

DEPARTMENT OF STATE,  
*Washington, November 20, 1851.*

SIR: The President of the United States having thought proper to name John Bozman Kerr their chargé d'affaires to the national representation of Central America, I have the honor of announcing the same to your excellency, and of praying you to give credence to whatever he shall say to you on my part. He knows the concern which our Republic takes in the interest and prosperity of the national representation of Central America; our strong desire to cultivate its friendship and to deserve it by all the good offices which may be in our power. He knows also my zeal to promote these by whatever may depend upon my ministry.

I have no doubt that Mr. Kerr will so conduct himself as to merit your confidence, and I avail myself with pleasure of this opportunity to offer to you the assurance of my most distinguished consideration.

DANL. WEBSTER.

His Excellency the MINISTER OF FOREIGN AFFAIRS,  
*Of the national representation of Central America.*

WASHINGTON, *February 17, 1854.*

MY DEAR SIR: The most equitable mode of compensation to our foreign ministers has many times been made a subject of rigid scrutiny in view of the palpable injustice so often experienced by them under the various contingencies of their public service, and in 1825 it was specially brought to the notice of Congress and the country through the elaborate statements of Mr. Monroe. The precedents indicate \$9,000 as the amount to which I am entitled under the peculiar circumstances of my recent mission, embracing, in fact, all the States of Central America in virtue of commissions, subsequent in date to that accrediting me to the Republic of Nicaragua alone.

You are aware that early in the Thirty-first Congress, under suggestions from the State Department, an effort was made to substitute a minister plenipotentiary for the two chargés des affaires, resident at remote points from each other, in Leon de Nicaragua and Guatemala. My transfer from New Granada (after nomination and confirmation) to this delicate and responsible post in Central America was accompanied with a direct intimation of an intended renewal of this effort in the coming Congress. In the meanwhile I was tendered a commission, under date of March 12, 1851, as the chargé d'affaires to the Republic of Nicaragua. In May following two commissions were made out, requesting me to go, officially, to the Republics of San Salvador and Guatemala. For just such services, in our earlier history, diplomatic agents have had allowances sometimes in the form of half outfits and at others of a full outfit. An outfit for these journeys, with letters of credence to the two Governments, would barely reimburse me. The city of Guatemala is about fifteen days' journey from Leon de Nicaragua, the capital, where I had established my family, and the seat of government of the Republic to which I was accredited. A per diem, with all expenses going and returning, exclusive of stay in the respective capitals, is the compensation of a bearer of dispatches or a special messenger. What would be proper enough in this case could not be otherwise than grossly unjust to a resident minister at one court sent on special missions to others. The latter, in his official character, is thrown constantly in the public eye, and he has to encounter expenses commensurate with the position. The calculations of ingenious parsimony would be of little avail were they allowable.

Besides, in these journeys of nearly 2,000 miles, in an unsettled country, there was enough of privation and danger at every turn. I was many times in the saddle from dawn to midnight, lost by the mistakes of my guide in mountain paths. Some months previously the roads could not have been passed at all, except with a military escort. On the borders of Guatemala the roads had been infested by *lucios*, bodies of armed men, partly political, and always predatory, and I passed through districts where the villages, the lurking places of these men, had been recently laid in ashes, the inhabitants having been driven elsewhere.

During my stay in the city of Guatemala I parted with the British chargé and consul, Gen. W. Frederick Chatfield, whose route to the port of Izabal was over a portion of country held by these *lucios* in force, watching all the passes and ready to welcome every comer, native or foreign. This traveling in Central America was no holiday pastime, and these journeys had become absolutely imperative. The Governments of San Salvador and Guatemala were restive under the slight imparted on the part of the United States in neglecting, for several years, to provide for the due exchange of ratifications of treaties with them. In carrying out the instructions of our Government under these letters of credence to San Salvador and Guatemala I was called to the performance of just such duties as have repeatedly found their only equivalent in payment by outfit.

Let me turn now from these two special missions to San Salvador and Guatemala, so distant and difficult of access from my established residence as chargé to Nicaragua, and in addition to outfit for services in these two Republics I have a further claim to \$1,500 consequent upon my appointment as chargé d'affaires to "the national representation of Central America." This was composed of men claiming the entire control over the foreign relations of Nicaragua, San Salvador, and Honduras, and its seat of power at the time of my reaching the country was at Leon. The Republic of Nicaragua was represented here by an envoy extraordinary and minister plenipotentiary, and yet it dared not receive me in the face of arrogant assumptions on the part of this body, very soon after showing itself in its true colors as factions and revolutionary. The President of the United States was obliged in this difficult conjuncture to name me as chargé to the Government of the three States into which Nicaragua was then supposed, by the action of its public officers, to have been merged, and the letter of credence vests in me a right to claim an outfit of \$1,500. It was so adjudged in 1812, when Mr. Adams was sent specially from his residence to St. Petersburg to join Messrs. Gallatin, Bayard, and others in a mission to treat with Great Britain. My case in reference to the letter of credence to "the national representation of Central America" is precisely that of Mr. Connelson, under the Administration of the late President Polk. This gentleman, resident at Berlin, had a letter of credence to the Germanic Confederation, a quasi revolutionary movement, and for his journey to Frankfort-on-the-Main he had \$9,000. It was under precedents. Indeed, the only just and equitable mode of payment to a diplomatic agent in cases of special mission, as clearly shown by Mr. Monroe after much experience, is that by outfit. Every argument is in its favor, as from a variety of circumstances a foreign minister is exposed to many "expenses" which he must necessarily overlook and never claim.

A few more cases similar to mine had as well be cited. In 1800 Mr. William Vans Murray, of Maryland, resident at The Hague, was sent specially to Paris in order to act jointly with Messrs. Ellsworth and Davis. Mr. Monroe, when stationary at London, was specially sent to Madrid in 1804. Each was allowed on returning a full outfit of \$9,000 for his journey. In 1806 Mr. William Pinkney, of Maryland, was appointed to Russia, and required on his way to present a letter of credence at Naples. For this he was allowed \$9,000 "expenses in the form of outfit corresponding with his grade." I ask payment in a similar form, and the equity is the stronger when the difficulties and privations incident to traveling in Central America are considered.

This claim in my behalf, under the memorial presented by you to the Senate, is a perfectly equitable one, with precedents early and recent. I was a stationary or resident minister at Leon, the capital of Nicaragua, and under commissions of May 26, 1851, I was sent specially to two other Republics. The journeys were made in 1852, subsequent to the receipt of my commission as chargé d'affaires to "the national representation of Central America," enlarging my powers so as to embrace Honduras and Salvador as well as Nicaragua. The policy of our Government has been carried out in substituting a minister plenipotentiary for all the States in lieu of a chargé (as during my residence) to one of them. My position during this period was extremely delicate, as it was necessary to act in view of the civil war then flagrant, and with conflicting claims for sovereignty between Nicaragua and "the national representation." There is no avoiding the fact that, with an outfit and salary of a chargé to the Republic of Nicaragua, I have been forced to assume official responsibility in every one of the five States of Central America.

I was required to act, jointly with others, in an attempted settlement of the conflicting claims between Nicaragua and Costa Rica.

You have kindly taken in charge this matter of so much personal interest to me, and I am in hopes that some favorable action may at once be had upon the memorial.

I am, very faithfully, yours,

JOHN B. KERR.

Hon. J. A. PEARCE.

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March 30, 1854.

[Senate Report No. 157.]

Mr. Clayton made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Catharine Crosby, as one of the heirs of Thomas D. Anderson, late consul of the United States at Tripoli, have had the same under consideration, and respectfully report:

That concurring fully in the views and conclusions embraced in the report on this case, made by the Committee on Foreign Relations on the 29th of March, 1852, this committee adopt the same, and report a bill in accordance therewith.

[See Senate Report No. 157, Thirty-second Congress, first session, p. 645.]

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April 27, 1854.

[Senate Report No. 245.]

Mr. Everett made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Henry Cronchey, lately employed as a clerk in the office of the United States legation in London, have had the same under consideration, and submit the following report:

Mr. Cronchey was for several years employed as a clerk in the office of the United States legation at London at a very low rate of compensation. Early in 1853 the President authorized his allowance to be raised for the whole period of Mr. Lawrence's mission; but, even after this increase, it amounted to but about \$500 per annum. In consequence of the greatly augmented business of the legation the Secretary of State, at the last session of Congress, recommended an appropriation of \$800 as the salary of a permanent clerk at London; and owing to the great satisfaction which Mr. Cronchey had given to several successive ministers, by the assiduous and punctual performance of his duty, it was privately and unofficially intimated to him that it was the wish of the Department that he should be employed on the permanent foundation. Mr. Cronchey represents that the confident expectation that he should be thus employed prevented his obtaining places under the British Government, for which he was well qualified and highly recommended.

The Department of State having, in the course of the last year, come to the resolution not to authorize the employment in the offices of our ministers and consuls abroad of any persons not citizens of the United States, Mr. Cronchey's connection with the legation at London necessarily ceased; and one object of his memorial is to solicit

from Congress indemnification for the loss which he has sustained in consequence of having given up prospects of employment elsewhere in the expectation of remaining in the office of the legation at London. The committee regret that Mr. Cronchey should have been disappointed in his expectations; but they can not find in this circumstance any foundation for a claim to be indemnified by the United States. All persons taking employment in the public service necessarily take it with the risks of discontinuance to which it is liable; and this risk must, of necessity, be more than usually great in cases of employment under a foreign government.

Mr. Cronchey further sets forth that he performed all the clerical duties of the office of secretary of legation at London from the 11th of December, 1852, the date of the resignation of Mr. Davis, to the 31st of January, 1853, when Mr. Treseot, the successor of Mr. Davis, arrived; and from the 1st of May, 1853, when Mr. Treseot resigned, to the close of Mr. Ingersoll's mission, on the 24th of August—in all one hundred and sixty-eight days. The committee are satisfied that this statement is correct, and that a great amount of extra labor devolved upon Mr. Cronchey at this time, which could only have been performed by him at extra hours, and which could not have been dispatched at all but for his familiarity with the business of the office. Mr. Ingersoll certifies to the satisfactory manner in which the laborious duties thus devolving upon Mr. Cronchey were performed by him, and that at a season of the year when the labors of the office, owing to the number of passports to be issued or countersigned, are the heaviest. Under these circumstances the committee are unanimously of opinion that it would be just to allow Mr. Cronchey the sum of \$1,000 in addition to his pay as clerk in compensation for the extra services performed by him in the office of the legation, and they **report a bill accordingly.**

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[See p. 673.]

**May 15, 1854.**

[Senate Report No. 266.]

**Mr. Clayton made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Charles D. Arfwedson, consul of the United States at Stockholm, have had the same under consideration, and now report:

It appears from a letter of the Secretary of State, dated January 27, 1852, that upon the recall of Mr. Ellsworth, late *chargé d'affaires* of the United States to Sweden, he was directed by the Department of State to place the legation in the hands of the United States consul at Stockholm. In compliance with that direction Mr. Ellsworth transferred the legation to Mr. Arfwedson on the 24th of July, 1849. From that time until April 22, 1850, when Mr. Schroeder entered upon the functions of the office, Mr. Arfwedson, "in conformity with repeated instructions from the Department, corresponded with the Swedish Government and his own upon diplomatic subjects of a delicate nature, and in a manner entirely satisfactory to his Government," and that his services during that period were of great value to the interests of his own Government.

The memorialist acted as *chargé d'affaires* for a period of eight

months and twenty-nine days, for which his compensation, at the usual rate of \$4,500 per annum, would amount to the sum of \$3,362.50. In the general civil and diplomatic appropriation act of August 31, 1852, provision was made for the payment of half that sum to the memorialist, leaving \$1,681.25 still due, for which he now appeals to Congress.

When this application was before this committee during the last Congress it was believed that the consul fees, together with the amount then allowed, would be equivalent to the full compensation of a chargé, and hence the whole was not then allowed. But it now appears from a certificate of the memorialist, filed with the present application, that the whole amount of consular fees received by him from the 1st of April, 1849, to the 1st of April, 1850, was but \$89.75—a sum believed to be barely adequate to cover the expenses of the consular office itself.

Under these circumstances the committee see no reason why a discrimination should be made against this particular claimant, while it has been usual to allow full compensation for such services in other similar cases. They therefore report a bill for the amount of the balance above stated, and recommend its passage.

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[See p. 681.]

May 29, 1854.

[Senate Report No. 292.]

Mr. Mason made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Mr. John Randolph Clay, minister of the United States to Peru, setting forth the expediency of making provisions by law for the relief of distressed citizens of the United States, other than seamen, in foreign countries, have had the same under consideration, and submit the following report:

The subject of the memorial is one of daily increasing importance. Since the acquisition of our Territories and States on the Pacific Ocean and the discovery of gold in Australia, the commercial intercourse of the United States with these regions has greatly increased, and the number of citizens who are led by the spirit of lawful adventure to undertake distant voyages has proportionately multiplied. A very large part of the whale fishery is carried on in seas remote from home; the voyages are long, and the risk of shipwreck and other disasters great. These causes have led to a great increase of late years in the number of American citizens who find themselves in a destitute condition on the Pacific coasts of South America. Provision is made by law for the relief of seamen. Our consuls are allowed to provide them, when they are in want, with the necessities of life, and to send them home in American vessels. But it must often happen that citizens not seamen are in a state of destitution in foreign countries, calling aloud for relief. A large number of emigrants, carrying with them no means of support in case of sickness or loss of the vessel in which they are embarked, are constantly on their way to the new fields of industry above indicated, and when cast on shore have no resource from actual starvation but the private charity of the agents of the Government abroad and the compassion of strangers, who, from want of national sympathy—often want of community of language and religion—are neither able nor willing to extend prompt relief.

Although this state of things exist to a greater extent on the Pacific coasts of this continent than elsewhere, it prevails more or less in many other parts of the world, since there is no part of the globe within reach of commercial intercourse that is not visited by American vessels.

The Committee on Foreign Relations have now before them an application in favor of the commercial agent of the United States for the Mauritius, who felt himself obliged to extend relief to a large number of American citizens not seamen, who were left on shore at Port Louis, in that island, on their way to Australia, in a state of entire destitution.

The memorial of Mr. Clay, our minister to Peru, contains the result of his experience and observation in that quarter, and throws much light on the extent of suffering that often exists from the causes above mentioned, and the necessity of effective measures of relief. The committee have appended his memorial to this report, as presenting a satisfactory discussion of the subject.

Other commercial and maritime States have found the necessity of making provision for the relief of their destitute citizens, other than seamen, abroad, though there is no other country probably which sends forth to foreign parts so large a number of its inhabitants in proportion to its population in the pursuit of commercial adventure of all kinds as the United States.

The committee are sensible there is some danger of abuse in making provision of this kind for the relief of citizens in distress in foreign countries, but the same danger exists in the case of seamen. The agents of the Government abroad will no doubt in a few cases be imposed upon; but as the relief afforded can never be large, and as the recipient must, to entitle himself to it, be manifestly in a suffering condition, the committee do not apprehend that frauds of a serious nature can be practiced. The loss of a dollar or two occasionally bestowed upon an undeserving object is not to be weighed against the duty of furnishing food and clothing to a distressed countryman in absolute want of the necessaries of life.

The committee, however, do not recommend at present a system of relief for all destitute citizens of the United States in foreign countries, but to those classes only whose case is peculiar and nearly assimilated to that of seamen, viz, to those who, in any part of the world, are reduced to want by shipwreck or the abandonment of the vessel in which they had embarked, and to those who, being on their way from one part of the United States to another, have become destitute in foreign countries in consequence of shipwreck, disease, or any other casualty. This last class would include our fellow-citizens passing from the Atlantic States round Cape Horn, or across the different routes of Central America, toward the States and Territories on the Pacific, and this is supposed by the committee to be the most numerous class, and that whose distresses call loudest for relief.

With these explanations the committee report a bill.

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#### MEMORIAL.

*To the honorable Senate of the United States,*

*the memorial of John Randolph Clay respectfully sheweth:*

That having had the honor of serving the United States in different diplomatic capacities for many years past, and consequently having been in constant intercourse abroad with citizens of the United States of various conditions and circum-

stances, he is convinced of the necessity that some provision should be made by law to aid those who may be destitute in foreign countries.

It is doubtless well known to your honorable body that business, the search of occupation, the idea that their condition might be bettered by a change, a desire to see foreign countries, and other causes, induce numbers of our enterprising citizens to go abroad. Many of them succeed in their views, but others are disappointed, their plans are frustrated, and instead of acquiring the means of living, they find themselves far away from their native land, and often in want of even the necessaries of life. Shipwreck, accident, and disease increase the number of these unfortunates, who thus become objects of public charity.

Were such indigent citizens at home, they could apply for assistance, when every other resource failed them, to the charitable institutions, supported by public or private donations, existing in almost every State of the Union. And though the individual were to find himself in distress in a State of which he were not a native, the fact of his being a citizen of the United States would suffice to excite a certain sympathy and disposition to aid through which his wants would be relieved.

But the case is far different when the scene is changed to a foreign land. There little sympathy is felt for the destitute stranger. Unknown and unfriended, he is often looked upon as an impostor from the very fact of asking for assistance. His difficulties are increased in these countries of Spanish origin, where there is generally a lamentable indifference to human suffering, and where a Protestant is considered as without the pale of the church. "Go to your minister or your consul," is the usual answer to the foreigner's application: and neither is authorized by the laws of the United States to assist his countrymen unless they be mariners.

It has happened in two or three instances that vessels bound for California with passengers have been wrecked in the Straits of Magellan, and the crew and passengers brought to Callao in another ship. Having lost everything, clothes and money included, the crew and passengers on their arrival look around them for relief. The first person applied to is the consul. He turns to his instructions and sees that by the act of February 28, 1803, it is made the duty of consuls "to provide for the mariners of the United States who may be found destitute within their districts sufficient subsistence and passages to the United States." Consequently he takes the crew of the lost vessel under his protection and provides for them at the public expense, but as the act does not justify him in relieving destitute passengers, he is compelled either to tell them he can do nothing for their relief or to assist them out of his own purse. Failing the consul, the next person applied to is the diplomatic agent, who is placed in an equal dilemma.

Your memorialist would respectfully represent that this is not as it should be. It is disagreeable to refuse charity under any circumstances to a fellow-creature, but it is painful indeed to the feelings to put back the outstretched hand of a fellow-countryman that asks for bread in a foreign land! And yet the diplomatic and consular agents of the United States are frequently subjected to this trial, for the salaries of the one and the fees of the other are usually insufficient for their own maintenance: besides, being removable at pleasure, there is often little inclination to give relief, as the public agent may look forward to a time when all the means he can command might be required for his own support.

The act of February 28, 1803, is a wise and humane law, justly providing for a class of citizens that every civilized government is careful to protect. But is not the nation bound to provide for, as well as protect, under certain circumstances, other classes of citizens when abroad, in return for the allegiance which they owe it?

At present, should a citizen of the United States be injured in his person or property by the acts of a foreign power, he can claim the protection of his Government, and the appeal will be listened to and justice rendered him, either through peaceable negotiation or compulsion. But should the same citizen, not being a mariner, become destitute from sickness or other cause in a foreign country, the public agents of the United States are not authorized by law to aid him! The Government takes care that his person and property shall be protected from foreign wrong, yet he may starve unless succored by private charity!

This inconsistent state of things might be easily remedied were an act passed by Congress to afford relief to citizens of the United States who are absolutely destitute in foreign countries and to provide for their return to the United States at a rate not exceeding — dollars. Under the act the diplomatic and consular agents of the United States might be authorized to expend a certain sum annually for the relief of such citizens, leaving it to the agents to decide upon the merits of each case: the agents to render an account quarterly of the sums so expended. This is the course sanctioned by Great Britain, and the amount spent for such purposes by the consul-general in Lima is usually \$500 per quarter. The appropriation in

aid of citizens of the United States need not exceed that sum per annum for Peru, though in Panama and a few other places in America and Europe a larger sum would be required. It is not probable that the number of applications to the diplomatic and consular agents for relief would be increased by the fact of their being authorized to afford pecuniary assistance to their countrymen in distress, for there is a characteristic independence and proper pride in our citizens which revolts at the idea of seeking even a temporary maintenance which is not earned by their own exertions.

There are unquestionably adventurers little deserving public sympathy, but there are many more meritorious persons, willing to exert themselves, who are unable to obtain employment because they are foreigners and do not speak the language of the country, or for other reasons. Some of these last, though destitute abroad, possess means in the United States or have friends to whom they could apply if at home. In such cases the diplomatic or consular agents might make an arrangement that the person relieved should repay to the Government, upon his arrival in the United States, the amount advanced for his support and passage, and report the same to the proper department so that it might be recovered. The meritorious citizen would be thus relieved, and in many instances the Government not be a loser.

In conclusion, your memorialist prays that an act may be passed for the temporary relief of citizens of the United States who are destitute in foreign countries and to provide for their return to the United States.

J. RANDOLPH CLAY.

LIMA, November 28, 1853.

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May 29, 1854.

[Senate Report No. 293.]

Mr. Mason made the following report:

The Committee of Foreign Relations, to whom was referred the memorial of John S. Tyler, of Boston, have had that subject under consideration, and submit the following report:

The United States bark *Peytona*, Oliver Nye Jenkins, master, sailed from New York on the 9th of February, 1853, for Melbourne, in Australia, having on board 135 passengers. After a series of disasters, and having put into Bahia and the Cape of Good Hope for supplies, the *Peytona* arrived at Port Louis, in the Mauritius, in the months of July and August, in distress. A course of vexatious legal proceedings was here instituted against Captain Nye and his vessel by some of the passengers and the crew, which ended in the abandonment and sale of the *Peytona*. The crew, and such of the passengers as were destitute of resources, were thus thrown upon the hands of Mr. Farnum, the commercial agent of the United States at Port Louis. The seamen were relieved by him, and sent from the island as opportunities presented themselves; and the destitute passengers, being American citizens, to the number of 64, were placed on board the British bark *Harpooner*, bound to Port Philip, in Australia.

To defray the expenses thus incurred, Mr. Farnum drew two bills on the Department of State, bearing date December 24, 1853, amounting all together to \$7,851.50, which were cashed by Messrs. Blyth & Co., English merchants at Port Louis. These bills could not be paid at the department, the expenditure not having been made for destitute seamen, for whom alone the law provides. But, as the case appears to have been one of extreme hardship and undoubted distress, the committee are unanimously of the opinion that Mr. Farnum was justified in assuming the responsibility of relieving them. They accordingly report a bill authorizing the payment of his drafts.

June 15, 1854.

[Senate Report No. 307.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the "petition of William Duer, praying remuneration for expenses incurred and services rendered while consul in Valparaiso in defending William N. Stuart, an American citizen, against a criminal prosecution by the Chilian authorities," have had the same under consideration, and now respectfully report:

That the petitioner sets forth in his petition that, in or about the month of July, 1852, while United States consul at the port of Valparaiso, in Chili, one William N. Stuart, an American citizen, and a passenger in the American ship *Venice*, then lying in that port, and bound to San Francisco, was arrested and imprisoned upon the charge of murder; that said Stuart being without money or friends, the petitioner took upon himself the burden of his defence, which was greatly augmented by the conduct of the judge before whom said Stuart was arraigned in refusing to hear the witnesses of the accused; that in prosecuting said defence he incurred considerable expense in money, besides performing much personal labor; that with the zealous cooperation of the Hon. Balie Peyton, United States minister to the Government of Chili, and the prompt action of our own Government at home, the said Stuart was ultimately released, and sent to the United States by the petitioner.

The statements of the petitioner are fully sustained by quite a voluminous correspondence between the petitioner and Mr. Peyton, and between the latter and the authorities of Chili, and also with the Department of State at home, from which it appears that the whole conduct of the petitioner, in regard to that transaction, was characterized by persevering diligence, high intelligence, and an uncompromising devotion to the honor and interest of the United State.

It further appears from a letter of the Hon. William L. Marcy, Secretary of State, dated June 9, 1854, addressed to one of the members of your committee, that "while the Department cheerfully bears testimony to the diligence and discretion of Mr. Duer's official conduct in the case referred to, it is conceived that in pursuing that course, he was merely discharging his duty under the forty-fourth article of the consular instructions." And further, that "when the compensation of an officer, whether by fees or by salary, is established by law, it is inexpedient to grant him a gratuity for the faithful performance of his duty in any single case." That "this principle would seem to be particularly applicable to the consulate at Valparaiso, at the period adverted to, when the fees received by the consul afforded him a liberal compensation for his official services generally," but that "any expenses which Mr. Duer may have incurred in protecting and defending Stuart are a fair charge against the Government, if Stuart was unable to defray them himself."

Concurring entirely with the Department in these views and believing that the petitioner should receive a remuneration for the expenses actually incurred by him, together with an equitable advance for the use of the money expended by him in the support, defence, and subsequent transportation to the United States of said William N. Stuart, your committee report a bill accordingly, and recommend its passage.

[See p. 666.]

July 1, 1854.

[Senate Report No. 335.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the petition of H. S. Sanford, late secretary of legation at Paris, praying the difference between his pay as secretary of legation and as chargé d'affaires, etc., during the time he acted in the latter capacity, have had the same under consideration, and report:

That it appears from a letter of the Secretary of State, dated June 21, 1854, that the petitioner was appointed secretary of the legation of the United States at Paris on the 20th August, 1849; that from the 14th of May, 1853, to the 22d of January, 1854, a period of eight months and eight days, he was left in charge of the legation as acting chargé d'affaires ad interim; that during that period he was allowed clerk hire, and, further, that in several instances, when secretaries of legation at Paris have been left as chargés d'affaires, Congress have allowed them outfits, though it is not a matter of course to make such allowance.

In view of the importance of the mission to Paris the necessary increase of expenses incident to the change from the position of secretary of legation to that of chargé d'affaires, and in accordance with the general current of precedents in relation to diplomatic agents of the United States at that court, your committee are of opinion that the petitioner's claim for an outfit and the difference in salary between a secretary of legation and chargé d'affaires is reasonable and should be allowed, and report a bill accordingly, with a recommendation that it be passed.

[See p. 678.]

July 1, 1854.

[Senate Report No. 336.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Robert M. Hamilton, United States consul at Montevideo, praying compensation for diplomatic services, having had the same under consideration, respectfully report:

In his memorial Mr. Hamilton represents that as consul at Montevideo from the year 1838 up to that time he had been the sole accredited agent of the United States near that Government; that, in consequence of the war pending between that country and Buenos Ayres, nearly his whole time was taken up in performing diplomatic duties in nowise appertaining to his consular office; that for these services he has received no compensation whatever, and that his consular fees during the time amounted to only \$500 a year.

From a letter of the Secretary of State, to whom this memorial was referred, dated February 5, 1851, it appears that "Mr. Hamilton was appointed United States consul at Montevideo in 1838, at which place a legation of the United States had never been established; that entirely uninstructed and unauthorized by the Department, except in two cases of claims of our citizens against the oriental republic

hereinafter mentioned, he entered into correspondence direct with that Government touching the protection of the interests and persons of our citizens, copies of which were from time to time transmitted to the Department; that on the 27th August, 1846, Mr. Hamilton was requested by the Department to obtain from the oriental republic a release of any interest it might have in the claim of Commodore Danel on the Government of Colombia; and on the 1st December, 1847, he was instructed to demand of that Republic that the arrears of interest due Messrs. W. Musser & Co., under the arrangement made with Commodore Turner, for gunpowder seized be paid at once, and that the payments to become due be punctually met."

It further appears from said letter that "in February, 1846, Mr. Hamilton, through his agent, presented a claim to that Department for compensation for diplomatic services for seven years, which was rejected on the ground that the act of May 1, 1810, prohibited such payments unless to persons regularly appointed, and, further, that the Department had never regarded Mr. Hamilton as a diplomatic agent of the Government, and, until the presentation of that claim, was not aware that he regarded himself in that light."

All the precedents referred to by the memorialist in support of his claim relate to secretaries of legation performing diplomatic functions in the absence of the minister, except four, two of which provided compensation for consuls performing diplomatic services during the temporary suspension of regular diplomatic relations previously established, and the others to informal agents specially charged with such services. And further, after having caused a careful examination to be made of all the precedents in such cases, your committee have been unable to find a single instance in which such claims have been allowed to United States consuls, except those cases in which, during the temporary absence of the minister, or suspension of diplomatic relations, the consul has been placed in charge of the archives of the legation, or specially instructed to perform such duties.

From this practice, founded in and sustained by considerations of a just and wise policy, your committee find nothing in this case to justify a departure. They therefore recommend that the claim be rejected.

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July 10, 1854.

[Senate Report No. 347.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Lieut. William D. Porter, of the United States Navy, praying that he may be reimbursed for expenses incurred by him in bringing to this country Amin Bey, of the Turkish navy, in the year 1850, have had the same under consideration, and now report:

That after a careful examination of the case, in connection with the report on it, made by the same committee on the 26th of February, 1852, they fully concur in and adopt the same, and report a bill in accordance therewith.

[See Senate Report 97, Thirty-second Congress, first session, p. 644.]

July 13, 1854.

[Senate Report No. 353.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of William Rich, late Secretary of the United States legation in Mexico, have had the same under consideration, and report:

The petitioner represents that he was appointed secretary of legation under the Hon. Robert P. Letcher, United States minister to Mexico; that from the departure of Mr. Letcher, on the 2d August, 1852, to the presentation of his credentials by Mr. Conkling, on the 30th November ensuing, he acted as chargé d'affaires of the United States; that for that period—three months and thirty days—he only received the compensation of a secretary of legation, and now asks that he may be allowed the difference between the compensation of a secretary of legation and that of a chargé d'affaires.

A letter from the Secretary of State, dated May 30, 1854, in answer to inquiries made of him by the committee, fully sustains the statements of the petitioner, and adds that the petitioner rendered faithful and important services whilst acting in the character of chargé d'affaires, and that during the time he so acted there was no other accredited representative in Mexico from this Government.

Your committee find, upon examination, that it has heretofore been the usual practice of Congress to make such allowances in similar cases, and regarding it as right in itself, report a bill in favor of the petitioner, and recommend its passage.

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July 13, 1854.

[Senate Report No. 354.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom were referred the memorials of the Hon. Robert C. Schenck, late United States minister plenipotentiary to the court of Brazil, and the Hon. John S. Pendleton, late United States chargé d'affaires to the Argentine Confederation, praying compensation for services rendered and expenses incurred by them on special missions to other governments than those to which they had been originally accredited, having had the same under consideration, respectfully report:

That it appears from the memorial of Mr. Schenck, that while residing at Rio de Janeiro, in Brazil, in the character of envoy extraordinary and minister plenipotentiary of the United States to that Empire, he received on the 12th day of June, 1852, two letters of special instruction from the Secretary of State (of the United States), dated severally on the 28th and 29th of April, 1852, directing him to repair to Buenos Ayres, in the Argentine Confederation, and to Montevideo, in the oriental Republic of Uruguay, there in conjunction with Mr. John S. Pendleton, the chargé d'affaires of the United States to the Argentine Confederation, to propose to and, if possible, conclude with those respective Governments favorable treaties of commerce, for which purpose he was duly accredited to those Governments with all the attributes of an envoy extraordinary and minister plenipotentiary.

That, in obedience to the instructions and authority thus given, he hastily prepared and proceeded successively to Montevideo and to Buenos Ayres, joined his colleague (Mr. Pendleton) in the missions at the latter place, and, after being presented and received, opened negotiations on the subject of the mission, which could not, however, at that time be conducted to a favorable result on account of the unsettled state of the Government and country. That, together with Mr. Pendleton, he went thence to Montevideo, opened negotiations with the Republic of Uruguay, and on the 28th of August, 1852, concluded a treaty of amity, commerce, and navigation with that Republic.

That after having obtained an understanding with General Urquiza, the provisional director and head of the Argentine Confederation, that the negotiations with that Government should be resumed in November following, and that in the meantime no precedence or advantage over the United States should be allowed to any other nation, he returned to his post at the court of Brazil in September, 1852. That the breaking out of civil war and continuance of political disturbances in the Argentine Confederation delayed his return to Buenos Ayres until May, 1853, when there seemed to be a good prospect for the cessation of hostilities, which would enable them to resume the negotiation previously suspended. That upon the pacification of the country—brought about in part by the intervention of his colleague and himself—they succeeded in concluding, on the 10th day of July, 1853, at San Jose de Flores, a perpetual treaty with the Argentine Confederation, securing throughout its limits the navigation of the Rio de la Plata and its great tributaries, free to the merchant flag of all nations, and on the 28th of the same month concluded another treaty, general and perpetual, of friendship, commerce, and navigation with that Confederation, and then returned to his post in Brazil, on the 14th September, 1853.

That while engaged in these special duties he made long voyages by sea and traveled altogether, by land and water, more than 6,000 miles, and that he had to reside for more than six months in two distant capitals while he was obliged to keep up a house and establishment in the expensive city of Rio de Janeiro.

For these services thus rendered the memorialist asks that he may be allowed the usual outfit of an envoy extraordinary and minister plenipotentiary for each of the special missions on which he was thus employed and also for his actual expenses incurred therein.

The memorial of the Hon. John S. Pendleton sets forth his cooperation in the services above mentioned as the colleague of Mr. Schenck; and further, that in the month of November, 1852, under the instructions of the Department of State of the United States, and clothed with full powers, he proceeded to Asuncion and, in conjunction with the envoys of England, France, Sardinia, and Brazil, after a protracted negotiation, concluded a treaty with the Republic of Paraguay, by which that country was opened to our commerce.

That in performing the duties of these special missions to the oriental Republic of Uruguay and to the Republic of Paraguay he was absent from the Government to which he was originally accredited for more than six months, incurred heavy traveling and other incidental expenses without any diminution, for the time being, of the expense of keeping up his house and establishment at Buenos Ayres, and for these services thus rendered asks that the same compensation may be allowed him that may be granted to his colleague, Mr. Schenck.

Copies of the letters of appointment to the special missions above

mentioned, together with letters of credence to the respective courts, are filed with the memorials, and the several treaties referred to have all been submitted to the Senate for their approval.

To allow the full prayer of the memorialists in these cases would, in the opinion of your committee, be the introduction of a new system of compensation for public services, unsanctioned by the principles of a wise and just economy. The allowance of outfits to our foreign ministers, it is presumed, was not designed to operate as an indirect mode of increasing their compensation, but as means to enable them to fit up at the courts to which they are accredited such establishments as might be suited to their station.

In this case the memorialists had been regularly accredited as the diplomatic representatives of the United States—one as full minister to Brazil and the other as *chargé d'affaires* to the Argentine Confederation, at which places only did the expense of permanent establishments devolve on them. The special missions on which they were sent were temporary in their character, under letters of credence only to negotiate treaties, and not further accrediting them.

For these reasons your committee are of opinion that the claim for outfits should not be allowed. Believing, however, that the performance of those special services necessarily subjected the memorialists, for the time engaged therein, to a large increase of expense, it would seem to be but just and proper that they should receive full and ample indemnity for those expenses.

The committee understand that their actual expenses, while absent from their posts on the missions spoken of, have been, for the most part, allowed at the Department of State. They consider, however, from the peculiar circumstances of the case and the condition of the countries visited by these gentlemen, that extraordinary expenses may have been incurred, for which no voucher or other evidence than their own statements can be produced, and which the committee consider should be allowed them; and in lieu of the outfits asked the committee recommend, as compensation for this extra service, a *per diem* at the rate of the established salary of a minister for the time they were so employed, and they report a bill accordingly.

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[See pp. 691, 721.]

July 14, 1854.

[Senate Report No. 357.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, have had the same under consideration and report:

That the petitioner sets forth in his petition that while acting as principal interpreter of the Turkish language to the legation of the United States at Constantinople, he was, on the 30th July, 1852, accredited by an order of the President of the United States *chargé d'affaires ad interim* to the Ottoman Government by Mr. Marsh, United States minister resident in Turkey; that he filled that office in the absence of any other diplomatic agent of the United States at Constantinople until the return of Mr. Marsh from Greece on the 5th July, 1853; that

on the 13th December, 1853, he was again accredited by order of the President of the United States as chargé d'affaires ad interim to the Ottoman Government by Mr. Marsh on his return to the United States, and continued to act as such until the arrival of Mr. Spencer on the 31st January, 1854; that during the two periods above stated, amounting to twelve months and nineteen days, he performed all the duties and incurred all the expenses incumbent on the representative of the United States; and having received only the compensation of principal interpreter of the Turkish language during that time, he prays that he may be allowed the difference between that compensation and the usual allowance of salary and outfit to a chargé d'affaires.

A letter from the Secretary of State, in answer to inquiries made by the committee and dated May 31, 1854, fully sustains the statements of the petition, and adds:

It gives me pleasure to bear witness to the general merits and services of Mr. Brown as a faithful and efficient officer.

The committee believe that in this case the claimant is justly entitled to receive the compensation of a chargé d'affaires during the time he acted in that capacity, less the amount heretofore received by him as secretary of legation for the same period. They do not allow an outfit because they are not aware of any precedent for such allowance where there was a minister accredited at the post, nor do they think the circumstances of the present application call for it. They report a bill in accordance with these views, and recommend its passage.

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[See p. 661.]

July 24, 1854.

[Senate report No. 364.]

**Mr. Slidell made the following report:**

The Committee on Foreign Relations, to whom was recommitted the report heretofore made by them on the 1st instant, in the case of Henry S. Sanford, together with some additional documents, have reconsidered the same, and now submit the following supplemental report:

That, in consideration of the vast amount of duty which necessarily devolves upon the secretary of legation at Paris, as evidenced by the correspondence of Mr. Rives, submitted to them, the committee are satisfied that the charges for clerk hire paid by the memorialist, while secretary of legation at Paris, are reasonable, and should be allowed. They therefore submit an amendment to the bill heretofore reported by them in this case, and recommend its adoption.

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July 26, 1854.

[Senate Report No. 370.]

**Mr. Slidell made the following report:**

The Committee on Foreign Relations, to whom was referred the petition of the executrix of William W. Chew, deceased, late secretary of legation and acting chargé d'affaires at St. Petersburg, have had the same under consideration and now respectfully report:

The testator of the petitioner presented a petition in his lifetime

asking to be allowed an outfit in addition to his salary as chargé d'affaires in consideration of his having been accredited as such at St. Petersburg during the period that elapsed between the departure of Mr. Dallas and the arrival of Mr. Cambreleng as minister at that court. There does not appear to have been any report thereon by either House of Congress, and the same petition has been renewed by his executrix since his death.

The committee do not find that such allowance has been made, as a matter of course, to a chargé d'affaires ad interim. It has been allowed in some few instances, where the duties were discharged for a long period and when it appeared that they were of a character really entitling the officer to some compensation additional to the difference in salary between that officer and the salary of a secretary of legation.

On inquiry at the Department of State and by reference to the correspondence there of Mr. Cambreleng and Mr. Todd, the successors of Mr. Dallas, it does not appear that such was the case in regard to the services of Mr. Chew (referred to in the letters of the Secretary of State to Mr. Slidell, of this committee, dated respectively the 14th and 17th of July, 1854, and filed with the petition).

The committee are therefore of opinion that the prayer of the petition should not be allowed.

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[See pp. 677, 682.]

July 28, 1854.

[Senate Report No. 371.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Horatio J. Perry, secretary of legation at Madrid, praying compensation as chargé d'affaires for the several periods during which he acted in that capacity, have had the same under consideration and now report:

That the memorialist represents that, acting under the instructions of the Secretary of State and by order of the President of the United States, he has been called upon to serve the Government as their diplomatic representative near the court of Spain during the following periods, viz: From the 3d of July to the 24th of October, 1852; from the 11th of May to the 21st of June, 1853, and from the 4th of September to the 22d of October, 1853, making an aggregate of six months and twenty-two days, during which he has only received the compensation of a secretary of legation, and asks that he may be allowed the difference between it and the compensation of a chargé d'affaires for the time he thus acted.

The memorial is accompanied by a letter from the Secretary of State addressed to the Hon. Mr. Norris, United States Senate, dated 14th of July, 1854, in which he says:

At the request of Mr. Perry, secretary of the legation of the United States at Madrid, I transmit his petition to Congress for compensation as chargé d'affaires at times when he discharged the duties of that office. I believe the statements in the petition are correct.

The committee, regarding the claim as just and reasonable, report a bill in favor of the memorialist and recommend its passage.

July 28, 1854.

[Senate Report No. 372.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Robert M. Walsh, late secretary of the United States legation in Mexico, have had the same under consideration and now report:

That the petitioner represents that from the 1st of November, 1848, to the 1st of February, 1849, he acted as chargé d'affaires of the United States in Mexico, during the absence on leave of Mr. Clifford, the United States minister to that Republic, and that he again acted in the same capacity from the date of Mr. Clifford's recall until the arrival of his successor, Mr. Letcher, a period of five months. That on those occasions he was regularly presented to the Mexican Government as chargé d'affaires, and as such, charged with all the duties and responsibilities of the mission. That after his return to the United States, in 1849, he applied to Congress for the difference between the pay of a secretary of legation and that of a chargé d'affaires, which had always been allowed under similar circumstances, amounting to \$1,666.66, of which he received, under the provisions of the general civil and diplomatic appropriation act of March 3, 1851, one-half the amount claimed, viz, \$833.33½.

In support of his claim he refers to the act aforesaid, and files a letter from the Secretary of State, addressed to the Hon. John A. McClernand, chairman of the Committee on Foreign Affairs of the House of Representatives, dated 21st of December, 1851, which fully sustains the statements of the petition; and the Secretary adds:

The merits of claims of this character must depend on circumstances. The duties of the mission of the United States at Mexico are at all times arduous and important; and Mr. Walsh's dispatches to the Department show that he faithfully discharged them. The expenses of living in that city are high, and the expenses of the secretary of legation are necessarily increased, when, through any cause, he is left at the head of the mission. The statements of Mr. Walsh's letter (petition) are correct, and the circumstance of his having been presented by the minister as chargé d'affaires ad interim, pursuant to instructions of this Department, would seem to warrant a favorable consideration of his claim for an outfit.

An examination of the precedents in similar cases has satisfied the committee that the usual practice heretofore has been to grant to secretaries of legation temporarily performing the duties of chargé d'affaires, during the absence of the minister, the compensation of chargé d'affaires, though not to allow them an outfit except in special and peculiar cases. Why it was that the Thirty-first Congress departed from the usual custom in the case of Mr. Walsh, they have been unable to ascertain, and regarding this case as standing upon the same basis with numberless others of a similar character, in which the full compensation has been allowed, the committee can see no good reason for making a discrimination against this claimant, and they accordingly report a bill for an amount, which, with the sum heretofore received by him, will make up the full difference between the compensation of a secretary of legation and that of a chargé d'affaires for the time he acted in the latter capacity, and recommend its passage.

[See p. 696.]

July 26, 1854.

[Senate Report No. 373.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of George W. Lippett, United States consul at Vienna, praying compensation for diplomatic services alleged to have been rendered by him, have had the same under consideration, and now report:

It appears from a letter of the Secretary of State, dated July 17, 1854, in answer to inquiries made by the committee, that from the 13th October, 1852, on the return to the United States of Mr. McCurdy, our chargé d'affaires at Vienna, to the 10th December following, when Mr. Foote, his successor, was presented, the archives of the legation were left in the hands of the memorialist; and that from the recall of Mr. Foote, on the 21st May, 1853, till the arrival of his successor, Mr. Jackson, on the 13th of September of the same year, the memorialist was again left in charge of the legation; and the Secretary adds: "The services he rendered are regarded as useful and necessary; and although he was not charged with any special diplomatic duties, he had occasion, during the intervals in which he had charge of the property of the legation, to correspond with the minister of foreign affairs on official matters; and the position in which he was placed exposed him, it is presumed, to expenses such as would not have been incurred under other circumstances, and such as Congress has on several occasions seen fit to reimburse."

The committee regard this case as resting on the same basis of others in which compensation has been allowed, and therefore report a bill for the relief of the memorialist, and recommend its passage.

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July 28, 1854.

[Senate Report No. 374.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Henry Savage, United States consul at Guatemala, praying compensation for diplomatic services alleged to have been rendered by him, have had the same under consideration, and now report:

In a letter from the Secretary of State, dated 13th February, 1854, in answer to one of inquiry by the Hon. Thomas H. Bayly, chairman of the Committee on Foreign Affairs of the House of Representatives, it is stated that—

from early in 1830 until toward the close of 1833 Mr. Henry Savage corresponded with this Department in a diplomatic character, and as during that period there was no chargé d'affaires of the United States in that Republic, he assumed the functions of that agent.

It also appears that from the spring of 1842, say April or May, until the 15th November, 1848, Mr. Savage acted as chargé in the absence of any accredited agent to Central America.

He has also corresponded with this Department from the 10th May, 1850, until the present time, during which period there has been no accredited representative of the United States to the Republic of Guatemala, and the archives and property of the former legation in Guatemala have been almost constantly in his care.

The only communication on record in the Department addressed to him in relation to his diplomatic correspondence is by Mr. Buchanan, under date of 3d June, 1848, which acknowledges the receipt of letters from the 18th June, 1842, to 20th March, 1848, and adds: "These letters have furnished the Department with most acceptable information upon the subject of Central American affairs within the periods mentioned, for which I offer you my hearty thanks."

It may be proper to state further, that the information communicated to the Department by Mr. Savage has always been interesting and important.

From the character of the services rendered by the memorialist, as represented by the Secretary, the committee do not feel authorized to regard him as a regular diplomatic agent of the United States; but yet, in view of the importance of those services to the interests of our Government, and of the time and labor which the memorialist must have expended in their performance, they feel disposed to allow \$1,000 per annum for the period during which he was engaged therein, which they believe to be a reasonable compensation under all the circumstances, and report a bill accordingly.

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July 28, 1854.

[Senate Report No. 375.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of J. B. Holmans, late United States secretary of legation in Chile, praying additional compensation for extra clerical duties performed by him, have had the same under consideration, and now report:

It is stated in the memorial that from the 16th February, 1850, to the 24th June following, owing to the declension of the office by Mr. Walsh and the death of Mr. Hardin, his successor, before reaching the post, there was in fact no secretary to the United States legation in Chile, and that consequently, upon the appointment of the memorialist to that office on the 24th June, 1850, in addition to the current duties of the office he had also to perform all the unfinished business which had accrued from the 16th February preceding, and which consisted in recording in the books of the legation the dispatches and letters during the interval above mentioned, whilst there was no secretary present, as well as in indexing the same; and further, that prior to his connection with that legation none of its records had been indexed, and that he made a full and complete index not only to the papers of the late minister, Mr. Peyton, but also to those of his immediate predecessor, Mr. Barton, as well as a considerable portion of the early records, which he also would have completed but for ill health and the large accumulation of new business in the legation, which required his constant attention.

These statements are fully sustained by a letter from Mr. Peyton, our then minister in Chile, dated May 24, 1853, addressed to the memorialist, and also by a letter from the Secretary of State, addressed to the Hon. Thomas H. Bayly, chairman of the Committee of Foreign Affairs of the House of Representatives, dated February 9, 1854. In his letter, Mr. Peyton says:

Inasmuch as you performed the labor, it appears to me just and reasonable that you should receive the compensation attached to the office, etc.

And further:

This allowance is rendered more proper on account of the great expense in coming to and returning from Chile, which is but little less than \$1,000 for the round trip.

In his letter above mentioned the honorable Secretary of State says:

I have to inform you that Mr. Holmans has correctly stated the fact of the absence for several months of any secretary to the legation at Santiago, and from the correspondence of Mr. Peyton, envoy extraordinary and minister plenipotentiary to the Republic of Chile, it is evident that Mr. Holmans was taxed with the performance of onerous duties which had accumulated prior to his own appointment.

In this view of the case I have no hesitation in stating that the Department regards Mr. Holmans justly entitled to extra compensation for these extraordinary services.

In view of all the circumstances of this case the committee are of opinion that the memorialist is entitled to receive the compensation of secretary of legation, whose duties he is shown to have actually performed from the 16th February, 1850, and inasmuch as from that time to the 24th June, 1850, when he formally entered upon his official duties, that compensation had not been paid to any other person, no injustice can result to the Government from its allowance to him. They therefore report a bill in his favor, and recommend its passage.

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[See pp. 677, 683.]

July 28, 1854.

[Senate Report No. 376.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Peter Parker, secretary of legation of the United States and Chinese interpreter, praying compensation for his services as *chargé d'affaires ad interim*, have had the same under consideration, and now respectfully report:

That, in answer to inquiries made by the chairman of the committee, the Secretary of State says, in a letter dated 24th July, 1854: "It appears from the records and files of this Department that Dr. Parker (the petitioner) was acting as *chargé d'affaires ad interim* during the time specified in his petition," viz, from the 24th May, 1852, to the 31st January, 1853.

The committee, finding nothing in this case to distinguish it from others of a similar character in which such allowances have been made, report a bill in his favor, and recommend its passage.

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[See pp. 642, 684.]

July 28, 1854.

[Senate Report No. 377.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Joseph Graham, United States consul at Buenos Ayres, praying compensation for services as *chargé d'affaires ad interim* at that place, have had the same under consideration, and now report:

That it appears from a letter from the Secretary of State, in answer to one of inquiry addressed to him by the Hon. Thomas H. Bayly, chairman of the Committee on Foreign Affairs of the House of Representatives, dated 9th February, 1854, that—

the correspondence of the legation at Buenos Ayres shows that, on the departure of Mr. Pendleton from his post on a special mission to the upper provinces of the Argentine confederation, Mr. Graham was officially announced to, and recognized by, the Government of Buenos Ayres, as chargé d'affaires during Mr. Pendleton's absence, and in that character corresponded with the Government and with this Department from the 3d August, 1852, until the 11th of the following month.

On the 25th November, 1852, Mr. Pendleton again left Buenos Ayres for the Republic of Paraguay, and was absent until the 26th of March following. During this interval Mr. Graham addressed dispatches to this Department in the character of chargé d'affaires; and, although there is no evidence on file to show that he was officially presented to the Government, it appears that he was recognized by it in that capacity.

In view of all the circumstances of this case, and the many similar ones in which the relief here asked for has been granted, the committee are of opinion that the petitioner is entitled to the same measure of compensation extended to others, and report a bill accordingly, with a recommendation that it pass.

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[See p. 705.]

July 28, 1854.

[Senate Report No. 378.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Ferdinand Coxey, late secretary of the United States legation at Rio de Janeiro, praying compensation for diplomatic services, have had the same under consideration, and now report:

That it appears, from a letter of the Secretary of State, dated 9th February, 1854, in answer to inquiries made by the Hon. Thomas H. Bayly, chairman of the Committee on Foreign Affairs of the House of Representatives, that from the 12th May to the 16th of August, 1853, during the absence of the minister, Mr. Schenck, on a special mission to Buenos Ayres, Mr. Cox was, by authority of the Department, charged with the duties of the legation, was recognized by the Brazilian Government as chargé d'affaires ad interim, and in that character rendered such services to the interests of the United States as entitled him, in the estimation of the Department, to suitable compensation.

The committee, believing that the claim for the compensation of a chargé d'affaires during the period he acted in that capacity by the authority of the Department of State is reasonable, report a bill in his favor, and recommend its passage.

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August 3, 1854.

[Senate Report No. 387.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Betsey W. Eve, widow of Joseph Eve, praying to be allowed certain expenses incurred by her late husband while chargé d'affaires

to the late Republic of Texas, have had the same under consideration, and respectfully report:

That it appears from a letter of the Secretary of State that, owing to some error in the adjustment of his salary account, Mr. Eve was entitled to compensation for seven days not embraced therein; that, dying three days after presenting his letter of recall, his estate should be allowed his funeral expenses; and further, that if his wife or any member of his family were with him at the time of his death, that he would be entitled to one-quarter salary for return. It also appears that, upon the adjustment of his accounts at the Fifth Auditor's Office, there was a balance reported due from him of \$531.99 on his account for salary, and there was an additional item of \$206.50, which had been suspended in adjusting his contingent account for want of vouchers, which Mr. Eve promised to obtain and forward, but died before he was enabled to do so. The Secretary adds: "Mrs. Eve, having sought relief from Congress, can not now, it is believed, obtain an adjustment of her accounts unless Congress authorizes it."

It further appears from a certificate of Hon. J. Hamilton, filed with the papers, that Mrs. Eve was with her husband at the time of his death, and therefore, according to usage in such cases, his estate is entitled to one-quarter return salary.

The committee are of opinion that any just claim which the petitioner may have against the United States should not be prejudiced by the fact of her applying to Congress, and, believing that upon the proper adjustment of the accounts of her late husband the claim will be found to be just, they report a bill accordingly, and recommend its passage.

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[See p. 655.]

August 3, 1854.

[Senate Report No. 389.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Charles D. Arfwedson, late United States consul at Stockholm, asking compensation for diplomatic services, have had the same under consideration, and report:

It appears from the journals of the first session of the Thirty-second Congress that the memorialist presented his application for the compensation of a *chargé d'affaires* at Stockholm, from the 24th July, 1849, to the 22d April, 1850, a period of eight months and twenty-nine days; that the memorial was referred to this committee, and upon their motion a provision was inserted in the general civil and diplomatic appropriation bill directing the payment to the memorialist of the sum of \$1,681.25 in full for all such services for the period named, that sum being one-half of the salary of a *chargé d'affaires* for the same period.

The committee are aware that in cases of a full mission, where the duties of the legation have devolved upon the secretary, during the temporary absence of the minister, it has been usual to allow such secretary the salary of a *chargé d'affaires*, or one-half of the salary of the minister for the time thus acting. But they are not aware of any case in which the person merely temporarily in charge of a legation has for the time received the full salary of the head of a mission.

The mission at Stockholm was but that of a chargé d'affaires, the full salary of which was \$4,500 per annum. One-half of that salary has already been allowed to this memorialist for the time he acted as chargé d'affaires. To allow him the additional compensation now asked would be a departure from the previous practice in such cases, which the committee are not prepared to recommend. They therefore ask to be discharged from the further consideration of this claim.

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[See p. 646.]

**August 3, 1854.**

[Senate Report No. 390.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Joseph Balestier, late special agent of the United States in Asia, have had the same under consideration, and report:

That in March, 1852, Mr. Balestier presented a memorial to Congress, praying the allowance of certain expenses incurred by him in the performance of the duties of his said agency, previously rejected in the settlement of his accounts at the Department of State, and also for an extension of the time for the continuance of his salary. In that memorial no claim whatever was asserted for reimbursing the premium of exchange upon London now demanded. In the general civil and diplomatic appropriation act of that session full provision was made for all the claims then asserted.

If this claim were a just and proper one, it should have been presented in the first memorial, together with the others rejected at the Department, without some good reason for the delay in its assertion, which does not appear either in the memorial itself or the papers accompanying it. The committee are not disposed to reopen this case. Such a precedent might, and probably would, lead to great inconvenience, by holding out an inducement to claimants, under various pretexts, to continue to besiege Congress, from year to year, for additional allowances, even after all to which they were justly entitled had been previously granted. They therefore ask to be discharged from its further consideration.

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**August 3, 1854.**

[Senate Report No. 391.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of H. Gold Rogers, late chargé d'affaires of the United States at Sardinia, have had the same under consideration, and respectfully report:

That it appears from a letter of the Secretary of State, dated July 18, 1854, and written in reply to inquiries made of him by the committee, that "the claims preferred in this memorial have been urged by Mr. Rogers for many years with singular pertinacity, and have been considered and decided by this Department and by the proper accounting officers of the Government again and again. They have

been definitely settled by the Fifth Auditor, and everything that could properly be allowed has been allowed and paid to him."

The committee find that the Committee on Foreign Affairs of the House of Representatives, during the first session of the Twenty-ninth Congress, made a report (No. 308) on this claim adverse to the prayer of the memorialist, to which the committee beg leave to refer and adopt as part of this report, and for the reasons therein set forth ask to be discharged from the further consideration of the subject.

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[In the House of Representatives, February 18, 1846.]

The Committee on Foreign Affairs, to whom was referred the petition of H. Gold Rogers, have had the same under consideration, and ask leave to report:

That the memorialist was late chargé d'affaires to the court of Sardinia, and has preferred claims against the Government of the United States for the sum of \$4,500 as outfit, and the further sum of \$1,000 for the expenses of his journey from Turin to Genoa, relative to the commission and exequation of an American consul; and the further sum of \$2,250 as infit, or to cover the expenses of his return from his station mission, and 8 per cent upon the amount.

The committee have examined a statement of the settlement of Mr. Rogers's accounts, by which it appears that he has been allowed and paid an infit as chargé d'affaires to Sardinia upon the expiration of his term of service. His claim to a separate outfit of a chargé d'affaires, for and in virtue of his journey to Genoa, is in violation of justice, reason, and usage, and ought not to be allowed. His claim for his expenses covers a number of extravagant and unreasonable items, which have no sanction from the usages of the Government. It has been twice examined and both times properly rejected by the Department.

The committee recommend the disallowance of the entire claim of Mr. Rogers.

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August 3, 1854.

[Senate Report No. 392.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of J. G. Schwarr, late consul of the United States at Vienna, praying compensation for diplomatic services, have had the same under consideration, and respectfully report:

The petitioner sets forth in his petition that from the departure of Mr. Stiles, United States chargé d'affaires at Vienna, on the 1st of August, 1849, to the arrival of General Webb, 10th of February, 1850, and from the departure of General Webb, on the 8th of May, 1850, to the arrival of Mr. McCurdy, his successor, on the 13th of March, 1851, embracing in all a period of sixteen months and a half, he had charge of the archives of the United States legation, and during that period transacted all the occurring diplomatic business of the legation.

It appears, however, from a letter of the Secretary of State dated July 25, 1854, in reply to one of inquiry by the committee, "that Mr. Schwarr was never called upon by this Department nor required to perform duties of a diplomatic nature, and that it does not appear from the files of the Department that he did perform any such duties. His functions were consular, and it was in a consular capacity alone that he corresponded with the Government of the United States;" and further, that the appointment of Mr. Schwarr was never confirmed by the Senate. The committee see no reason for making the compensation asked for in this case, and ask to be discharged from its further consideration.

## THIRTY-THIRD CONGRESS, SECOND SESSION.

February 15, 1855.

[Senate Report No. 520.]

Mr. Mason made the following report:

The Committee on Foreign Relations, in compliance with the resolution of the Senate of December 27, 1854, instructing them "to inquire and report whether any, and what, compensation should be allowed to Commodore M. C. Perry for his diplomatic services in negotiating a treaty with the Empire of Japan," have had the subject under consideration, and now report:

From an examination of the correspondence relating to this negotiation, the committee are satisfied that the services rendered by Commodore Perry were of a highly important character in opening to the enterprising commerce of our country channels not only hitherto unexplored, but sedulously closed by the jealous and timid policy of an isolated and secluded race. And the correspondence shows, in the opinion of the committee, that the Government was fortunate in the selection of the officer to be sent on this distant and difficult mission. Former attempts made by other nations had shown that the great obstacle presented to negotiation was in the refusal of access to the Japanese Government, and it was necessary, therefore, that the mission should be attended by a large and imposing force.

A more complicated organization would have required a minister of highest rank, with the usual attendants, and a naval force sufficient to make his demand for communication with the Japanese authorities respected, and the committee readily concede that the important ends in view would have fully justified the expenditure necessary to such a mission. Yet the whole has been fully and successfully accomplished by the more simple form of confiding to the officer in command both military and diplomatic powers. The results are, that while heretofore not only was all commerce forbidden to our countrymen with the people of Japan, and they were not even permitted to land, but when thrown upon their coasts by shipwreck they were subjected to cruel and barbarous imprisonment, now the treaty provides as its first fruits that two ports shall be open to our commerce, with permission for an American consul to reside at one of them; that wood, water, provisions, and coal shall be furnished to our ships; that our shipwrecked mariners shall be carefully and hospitably treated and carried to the ports open to our trade; that there shall be permanent peace between the two countries; and that if hereafter any other or greater privileges shall be granted to any other nation, ours shall be at once equally admitted to their enjoyment.

The committee consider that these concessions will become of great value to the commerce of the country, and will insure the future safety of our countrymen who may be hereafter shipwrecked in those remote seas.

In order to effect the high objects of his mission, it was necessary that Commodore Perry should visit twice, with his whole squadron, the islands of Japan. The usages and peculiarities of that people also required a liberal, and even ostentatious, display of hospitality by their (at first) unwelcome visitors, and, although funds were placed under his control by the Government which might with propriety have been used for such purposes, yet, with dignified and becoming

prudence, Commodore Perry declined so to use them, and himself defrayed the expenses incidental to his visit.

For such expenses it would be impracticable to obtain vouchers, nor perhaps would it be easy accurately to state an account, were the committee disposed to exact it. They agree fully in opinion that, except on occasions of importance to justify it, officers in the service of the Government should not receive extra allowances when employed on service not strictly within the line of their official duties; yet the committee think the present occasion calls for some relaxation of the rule, and that, besides a full reimbursement to the officer of all expenses he may have incurred, some testimonial may also be safely given (without risk of precedent) to show a just appreciation by Congress of the discreet, able, and successful conduct of the important affairs committed to him.

As a measure for such reimbursement and compensation, the committee have been to some extent governed by what would have been the necessary expense of sending a minister of highest grade on the mission to Japan, deducting therefrom the pay and emoluments of an officer in command of the squadron at sea, and which they find would bring the amount to about \$20,000, and they report a bill accordingly.

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[See pp. 667, 671, 682, 683.]

February 15, 1855.

[Senate Report No. 521.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom were referred the petitions of Peter Parker, esq., secretary and interpreter to the United States legation in China, and of Horatio J. Perry, secretary of the United States legation to Spain, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial of Mr. Parker that he was placed in charge of the United States legation at Canton by Mr. Marshall, late commissioner of the United States to China, on January 12, 1854, the date of his departure from Canton, and that he performed the duties of the legation as *chargé d'affaires ad interim* from that time to the 14th of April following, when Mr. McLane, the new commissioner, arrived in that city and entered upon the duties of the mission; that during that period—two months and eighteen days—he only received the compensation of secretary and interpreter to the legation; and prays that he may be allowed the difference between it and the compensation of a *chargé d'affaires* for the time he performed the duties of that office.

The Secretary of State, in a letter addressed to the chairman of the committee, under date of January 12, 1855, fully sustains the statements of the memorial.

The memorial of Mr. Perry shows that on three several occasions, viz, from July 3 to October 24, 1852; from May 11 to June 21, 1853, and from September 4 to October 22, 1853, embracing in all a period of six months and twenty-three days, the charge of the legation to Spain was devolved upon him and he required to perform the duties and incur the expenses of a *chargé d'affaires ad interim*, for which he has only received the compensation of a secretary of legation. Mr. Perry also asks that he may be allowed the difference between the compensation of a secretary of legation and that of a *chargé d'affaires*

for the several periods during which he acted in the latter capacity. The statements of this memorial are also fully sustained by a letter from the Secretary of State dated February 5, 1855.

Regarding the principle as established by legislative usage to allow the compensation of a chargé d'affaires to secretaries of legation temporarily performing the duties of that station for the time so employed, the committee report a bill in favor of the memorialists and recommend its passage.

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**February 17, 1855.**

[Senate Report No. 525.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Robert M. Hamilton, United States consul at Montevideo, praying compensation for diplomatic services, have had the same under consideration, and now report:

That this claim was referred to the committee at the first session of the present Congress, and, after a full and careful examination, reported upon adversely. The additional papers filed with the present application relate only to matters which were fully considered by the committee at the last session, and they find nothing in them to change the views then entertained. They then adopt and reaffirm the report in this case made July 1, 1854, and ask to be discharged from the further consideration of the subject.

[See Senate Report 336, Thirty-third Congress, first session, p. 661.]

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[See p. 695.]

**February 20, 1855.**

[Senate Report No. 534.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of George P. Marsh, late minister resident of the United States to the Ottoman Porte, praying compensation for extra duties performed by him on a special mission to Greece, and for judicial services, under the act of August 11, 1848, have had the same under consideration, and now report:

Mr. Marsh's memorial is in the following words, viz:

Memorial of George P. Marsh, of Vermont, asking an appropriation for the compensation of his services as minister resident to the Ottoman Porte, under the act of August 11, 1848, imposing judicial duties on the minister, and of his services under a special mission to the Government of Greece.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

Your memorialist, a citizen of the State of Vermont, respectfully represents that upon the 29th day of May, 1849, he was appointed minister resident to the Ottoman Porte, and having entered upon the duties of his mission he continued in charge of the same until the 19th day of December, 1853, when he had his final audience of leave.

By an act of Congress approved on the 11th day of August, 1848, certain judicial duties were imposed on the commissioner of the United States to China, the minister resident of the United States to the Ottoman Porte (sec. 22), and the

American consuls in both those countries; and by the eighteenth section of the act it was provided that a compensation of \$1,000 per annum, in addition to his salary, should be paid to the "commissioner," in consideration of the duties imposed upon him by the act.

The predecessor of your memorialist, the Hon. Dabney S. Carr, claimed the payment of this sum in addition to his salary, but the Treasury Department refused to allow the same, on the ground that though judicial duties were imposed by the act upon both the commissioner to China and the minister to Turkey, the compensation was intended to be given to the commissioner alone.

Upon his return to the United States, Mr. Carr presented his memorial to Congress praying the payment of various sums of money claimed by him and disallowed by the accounting officers; and at the first session of the Thirty-second Congress, by an amendment to the civil and diplomatic appropriation bill, the said sum of \$1,000 per year, in addition to the salary, together with other moneys, was, as your memorialist is informed and believes, allowed to Mr. Carr for the performance of the judicial services aforesaid from the date of the passage of the act to his final departure from Constantinople. Your memorialist conceives that this allowance by Congress is a legislative construction of the true intent and meaning of the act of 1818, and that he is therefore entitled to the same annual amount; but the accounting officers have credited him his salary only.

Your memorialist further shows that by special instructions under date of April 29, 1852, the Department of State ordered your memorialist to proceed to Athens, in Greece, on board a vessel of the Mediterranean squadron, to investigate certain complaints preferred by Dr. Jonas King, an American citizen, resident in Greece, against the Government and the judicial tribunals of that country, report thereon, and, "after transmitting his report, to remain at Athens, or in its neighborhood, till he heard from the Department." In pursuance of these instructions your memorialist embarked for Athens, as soon as a ship was ready to receive him, and arrived at that city on the 31st day of July, 1852. He immediately engaged in the intricate and laborious investigations committed to him, and having completed his reports in the month of October following, he transmitted them to the State Department, and, in compliance with his instructions, awaited the further orders of the Department.

Upon the 5th of February, 1853, the President of the United States, through the State Department, instructed your memorialist to enter into communication with the Government of Greece and endeavor to obtain redress for the wrongs which Dr. King had suffered at the hands of that Government and its judicial tribunals.

Your memorialist accordingly commenced a negotiation with the minister of foreign affairs, and remained at Athens in the prosecution of the same until the 25th of June, 1853, when the alarming posture of affairs at Constantinople, in his judgment, required his immediate return thither, and he accordingly proceeded to that city; but the correspondence with the Greek minister was continued until the recall of your memorialist.

By the original instructions of the State Department your memorialist was directed to "keep an account of his traveling expenses whilst engaged in carrying out the instructions," and he accordingly presented an account, covering only some trifling disbursements for stationery, copying, etc., and his bare personal expenses, which has been allowed and paid.

Your memorialist further shows that, by the performance of the duties of the special mission committed to him his household expenses were much augmented, and that the loss of rent (his house having remained unoccupied during his absence), the sacrifice on the sale of horses and stores upon his departure, the expenses of protecting his house and other property, and other contingencies, amounted to more than the entire sum received by him for personal expenses, and that he is consequently a loser to a considerable amount by the performance of the arduous duties imposed upon him.

Your memorialist therefore prays that an appropriation may be made for such reasonable compensation as to your honorable body shall seem meet for the services and expenses aforesaid.

All of which is respectfully submitted.

GEORGE P. MARSH.

BURLINGTON, VT., December 1, 1854.

The Secretary of State, to whom the memorial was referred by the committee, with a request for such information on the subject as the Department might afford, in his reply, dated January 26, 1855, fully

confirms the statements of the memorials, and "bears cheerful testimony to the importance and peculiar character of the duties imposed upon him in his special mission to Greece, and to the fidelity and ability with which they were performed."

In view of the extra trouble and expense attendant upon the special mission to Greece, the committee are of opinion that the memorialist should be allowed the sum of \$4,500 for extra compensation, together with the expenses incurred by him on account of said mission, the amount of which expenses to be ascertained, in the absence of regular vouchers, by the certificate of the party.

Compensation for judicial services having been allowed to the predecessor of the memorialist by the act of August 31, 1852, making appropriation for the civil and diplomatic expenses of the Government, the committee can perceive no just reason why a similar allowance should not be made to the present memorialist during his continuance in the same mission. They report a bill accordingly, and recommend its passage.

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February 22, 1855.

[Senate Report No. 538.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Richard B. Carmichael in behalf of the legal representatives of William Carmichael, deceased, late *chargé d'affaires* of the United States at Madrid, praying the allowance of an outfit, etc., have had the same under consideration and now report:

The memorial represents that William Carmichael, then a Delegate to Congress from the State of Maryland, was in 1779 secretary of legation to Spain, and so continued till May, 1782, when Mr. Jay, the minister to that court, was called to another theater of public duty, leaving Mr. Carmichael in charge of the legation as acting *chargé d'affaires*, in which capacity he continued to act till the 20th of April, 1790, when he received a regular commission as *chargé d'affaires* of the United States to Spain, and continued to hold that office up to the date of his recall, which happened a short time before his death; that on the 24th of February, 1796, a memorial was presented to the House of Representatives by Antonia Carmichael, widow of said William Carmichael, praying the passage of an act to recognize her late husband as *chargé d'affaires* of the United States to Spain from the 20th of May, 1782, to the 20th of May, 1790, and to fix the principles on which the settlement of his accounts during that period should be made, and to make to him the same allowances, under his commission as *chargé d'affaires*, as were granted to others holding similar appointments from the United States.

It appears from Document No. 634, House of Representatives, first session of the Twenty-sixth Congress, that said memorial was referred to the Secretary of State with instructions to examine the same and report his opinions thereon to the House. Upon this the Secretary reported, on the 23d of February, 1857, that Mr. Carmichael, having originally been secretary of legation in Spain under Mr. Jay, became, on the departure of the latter, about the 20th of May, 1782, *chargé d'affaires de facto*; and, though not regularly commissioned, yet continued to be recognized and treated as such as well by Spain as by

the United States until the 20th of April, 1790, when he received a regular commission from his Government. And further, that, according to the regulations in force prior to the adoption of the Constitution, and under which Mr. Carmichael acted, down to the time of the receipt of his regular commission, he was entitled to a yearly salary of \$4,444.44, and to certain allowances for expenses, amounting in all to the sum of \$8,258.76. In regard to the outfit claimed, the Secretary was of opinion that it should not be allowed, because this was not a new appointment, but a mere continuance of Mr. Carmichael in the same office, the duties of which he had been performing for years.

In conformity with that report a bill was passed in his favor on the 15th of January, 1798, directing the allowance of \$8,258.76 for expenses, together with a salary at the rate of \$4,444.44 per annum for the period he acted as *chargé d'affaires ad interim*.

It further appears that on the 5th March, 1798, an account current between the United States and Mr. Carmichael was settled at the Treasury Department, which, after deducting an item for stationery, postage, etc., amounting to \$1,036.29, suspended for further information, and deemed to be unauthorized by the act of July 1, 1790, showed a balance of \$9,664.14 to be still due him. On the 27th April, of the same year, an act passed directing the payment of \$9,660.14 to his representatives upon the settlement of his accounts as late *chargé d'affaires* of the United States to Spain, which it is believed was designed to be in full satisfaction of his claims.

It does not appear from the reports, or any other documents to which the committee have had access, why it is that the bill provided for the payment of less, by \$4, than the amount shown to be due by the settlement. There may have been some reason for it, or it may have been the result of a clerical error. However that may be, it is deemed too small a matter to justify a reopening of the accounts at this late day. Nor does it appear that any efforts have yet been made by the claimants to sustain, either by evidence or explanation, the suspended item of \$1,036.29 above mentioned.

The majority of the committee of the House of Representatives, to whom this subject was referred during the first session of the Twenty-sixth Congress, reported against its allowance, and at this late day, without any additional information on the subject, this committee are not prepared to reverse the decision then made. They therefore **recommend that the claim be rejected.**

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[See p. 656.]

### THIRTY-FOURTH CONGRESS, FIRST SESSION.

April 23, 1856.

[Senate Report No. 143.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Hon. J. Randolph Clay praying additional compensation for his services as envoy extraordinary and minister plenipotentiary of the United States at Lima, have had the same under consideration and now report:

It appears from the memorial of Mr. Clay that on the 16th of March,

1853, while holding the office and performing the duties of United States chargé d'affaires to Peru he was duly appointed and commissioned by the President as envoy extraordinary and minister plenipotentiary of the United States to that Government, which, under the law as it then existed, entitled him to a salary of \$9,000 per annum from the date of his new commission; but for want of an appropriation for that purpose he only received the former salary of \$4,500 per annum up to the 30th June subsequent to the date of his new appointment. And he now asks that for the intervening period between the date of his commission as minister, etc., up to the 30th June, three months and fifteen days, he may be allowed the additional compensation due to his new grade.

In a letter from the Department of State, dated February 14, 1856, the Secretary fully sustains the accuracy of the statements of the memorial, and adds:

The practice of the Department prior to the enactment of the new diplomatic law of the 1st of March last was to allow a minister's salary to commence with the date of his commission, with the indulgence of from thirty to sixty days to make necessary arrangements for an absence from the United States. As Mr. Clay was at his post and received his commission without any suspension of official duty, I regard his claim to a compensation corresponding to his rank from the date of his commission as perfectly just, and recommend that an appropriation be made accordingly.

Regarding this claim just and in accordance with the previous usage of the Government, the committee report a bill in his favor and recommend its passage.

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[See pp. 667, 677.]

May 14, 1856.

[Senate Report No. 170.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Horatio J. Perry, esq., late United States secretary of legation at Madrid, praying additional compensation for services performed by him as acting chargé d'affaires, have had the same under consideration, and now report:

It appears from the petition that on four several occasions the duties of the United States legation at Madrid were devolved on Mr. Perry; first, from the 3d July to the 24th October, 1852, during the absence of the minister, Mr. Barrenger; second, from the 4th September to the 22d October, 1853, the interval between the recall of Mr. Barrenger and the entrance of Mr. Soulé upon the duties of the mission; third, from the 29th August to the 2d December, 1854, during the absence of Mr. Soulé on public business; and fourth, from the 1st February to the 17th June, 1855, the interval between the recall of Mr. Soulé and the entrance of Mr. Dodge upon the duties of the mission, embracing a period in all of about thirteen months; that the performance of those duties involved a considerable increase of his necessary expenses, and that during the whole period he only received the ordinary compensation allowed to a secretary of legation.

These statements of the petition are fully supported by a letter from the Secretary of State, dated March 26, 1856, in which he adds:

That Mr. Perry is fairly entitled to compensation beyond what he has received for the services rendered by him to the Government there can not be a doubt, whether regard be had to the character of his services or to the compensation not unfrequently allowed to others on like occasions.

Regarding this case as being fully within the principle established by precedent in similar cases, the committee report a bill in favor of the claimant and recommend its passage.

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[See p. 721.]

**May 14, 1856.**

[Senate Report No. 171.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Charles E. Anderson, esq., late secretary of legation of the United States at Paris, praying additional compensation for services rendered and expenses incurred by him as acting chargé d'affaires during a portion of the time, have had the same under consideration and now report:

That it appears from the memorial that Mr. Anderson was appointed secretary of the legation of the United States at Paris in 1836, under General Cass, our minister at that court; that in March, 1837, on the departure of the minister for the Mediterranean and the Holy Land, he was presented to the court of Louis Philippe as chargé d'affaires of the United States ad interim, and that from that time till the return of General Cass to his post, a period of eight or nine months, the entire duties, responsibilities, and expenses of the legation devolved upon him.

These statements of the memorial are substantially sustained by a letter from the Secretary of State, dated February 20, 1855, which says:

It appears from the records and files of this Department that Mr. Anderson acted as chargé d'affaires of the United States at Paris from the 1st of April until the 29th of November, 1837.

Regarding this claim as being fully within the principle heretofore established in similar cases, the committee report a bill for the relief of the claimant and recommend that it be passed.

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[See pp. 671, 677.]

**May 20, 1856.**

[Senate Report No. 181.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Peter Parker, esq., late secretary of legation and Chinese interpreter at Canton, have had the same under consideration and now report:

In his petition Mr. Parker states that in consequence of the vacan-

cies in the office of commissioner to China, he acted and was recognized by the Government of the United States as chargé d'affaires ad interim for the following periods, viz: From May 26, 1852, to January 31, 1853; from January 27, 1854, to April 14, 1854, and from December 9, 1854, to May 4, 1855, during which time he only received the compensation allowed to the secretary of legation and Chinese interpreter, viz, \$2,500 per annum, and now asks that he may be allowed the difference between that amount and the usual salary of a chargé d'affaires.

A letter from the Secretary of State, dated May 13, 1856, fully corroborates the statements of the petitioner, and the committee, regarding this case as clearly within the principle heretofore acted upon in similar cases, report a bill in favor of the petitioner and recommend its passage.

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[See pp. 696, 721, 722, 731.]

**May 20, 1856.**

[Senate Report No. 182.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial that on July 19, 1850, on the recall of Mr. J. B. Clay, chargé d'affaires of the United States at Lisbon, the archives of the legation were placed in the hands of the memorialist, then the acting consul of the United States at that port; that from that time to June 15, 1851, when Mr. C. B. Haddock, the successor of Mr. Clay, arrived in Lisbon, the entire duties and responsibilities of the legation rested upon and were performed by him; that during that time the fees and emoluments derived from the consulate were insufficient to pay the current expenses of the office, and that he has received no compensation whatever for the additional duties and responsibilities devolved upon him by having the charge of the legation.

The statements of the memorial are fully sustained by a letter from the Secretary of State, dated February 29, 1856, as to the time during which the affairs of our legation at Lisbon remained in Mr. Martin's charge, and the justice of his claim for compensation is strongly urged in a letter from Mr. Haddock, United States chargé d'affaires at Lisbon, dated January 18, 1853.

Regarding this case as being within the principle heretofore established in the allowance of similar claims, the committee report a bill for the relief of the memorialist and recommend its passage.

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[See pp. 642, 671.]

**May 23, 1856.**

[Senate Report No. 187.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Joseph Graham, United States consul at Buenos Ayres, praying compensation for diplomatic services, have had the same under consideration, and now report:

The claimant alleges in his memorial that as consul of the United States at Buenos Ayres he was placed in charge of the legation by Mr. Pendleton, the chargé d'affaires of the United States at that place, August 3, 1852, when the latter gentleman left his post on a special mission to Montevideo. That he was duly presented and recognized as the chargé d'affaires of the United States, performed all the duties, and incurred all the expenses and responsibilities of that office from that time to October 20, 1854, when Mr. Peden, the successor of Mr. Pendleton, entered upon the duties of the legation. He admits that Mr. Pendleton returned from his mission to Montevideo September 11, 1852, and remained until the 25th of November following, and that he also returned from his special mission to Paraguay March 26, 1853, and remained at his post until his return to the United States; but alleges that subsequent to his own recognition as chargé d'affaires by the Government of Buenos Ayres, and during the absence of Mr. Pendleton, a revolution occurred in that country and a new party came into power, by which he was recognized as chargé d'affaires, and consequently he continued to act in that capacity even while Mr. Pendleton was at his post.

The Secretary of State, in a letter to the Hon. Thomas H. Bayly, chairman of the Committee on Foreign Affairs, dated February 9, 1854, says:

That on the departure of Mr. Pendleton from his post, on a special mission to the upper provinces of the Argentine Confederation, Mr. Graham was officially announced to, and recognized by, the Government of Buenos Ayres, as chargé d'affaires during Mr. Pendleton's absence, and in that character corresponded with the Government and with this Department from August 3, 1852, until the 11th of the following month.

On November 25, 1852, Mr. Pendleton again left Buenos Ayres for the Republic of Paraguay, and was absent until the 26th of March following. During this interval Mr. Graham addressed dispatches to this Department in the character of chargé d'affaires, and although there is no evidence on file to show that he was officially presented to the Government, it appears that he was recognized in that capacity.

And in a letter to the chairman of this committee, dated May 12, 1856, the Secretary of State, after referring to the "continuous diplomatic service from August 3, 1852, until the arrival of Mr. Peden, that is, to October 20, 1854," which "Mr. Graham represents himself as having performed," as being for "a considerable part of the time at the most constructive, and not justly entitled to that consideration which Mr. Graham attached to it," adds:

I am of the opinion, however, that Mr. Graham is entitled to compensation in a diplomatic character during Mr. Pendleton's absences, mentioned in my letter to Mr. Bayly [above referred to], and from Mr. Pendleton's presentation of him on March 31, 1854, to the 20th of October of the same year.

Acting upon the principle heretofore established in similar cases, the committee report a bill in favor of the claimant, allowing compensation for the several periods the United States had no other diplomatic agent at Buenos Ayres, and recommend its passage.

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August 12, 1856.

[Senate Report No. 234]

Mr. Weller made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Dr. James Morrow, late agriculturalist attached to the squadron

under the command of Commodore Perry during his expedition to Japan, have had the same under consideration, and now report:

That it appears from his memorial and accompanying papers that some time in February, 1853, Dr. James Morrow, of South Carolina, was detailed by the Navy Department for the performance of such duty as might be assigned him in reference to the care and distribution of seeds and the use of agricultural implements, under the command of Commodore Perry, during his late expedition to Japan and the Chinese seas. That while engaged in that service, which continued for about two years, he did distribute large numbers of seeds to the inhabitants of Japan, Lew Chew, and other places, teach the proper mode of cultivating them to the natives, distribute agricultural implements used by us, with instructions how to use them, etc., and also collected a large number and variety of seeds and plants, the growth and production of those countries, many of which were new to us and promise to form a valuable addition to our agricultural and horticultural interests, carefully preserved and sent them home for distribution. That he also collected many specimens illustrative of natural history, now deposited in the national gallery at the Patent Office and at the Smithsonian Institution. That in the performance of those duties he necessarily incurred heavy expenses in traveling inland, hiring the protection of guards, etc. That at one time for a period of nearly four months during the expedition, owing to the indisposition of the surgeon and the general prevalence of sickness in the squadron, he was required to perform the duties of assistant surgeon.

That for all these various services he received no other compensation than is allowed to a master's mate (\$300 per annum), at which rank he was rated—among the lowest grade of officers known to the naval service—for want of power in the Department to assign him any other, as stated by the Secretary of the Navy.

The value and importance of Dr. Morrow's services are fully recognized by the Department of State, both in regard to the agricultural and scientific interests of the country, and he therefore asks that a compensation adequate to those services may be allowed him.

That he is clearly entitled to it can not be denied. The committee therefore report a bill in his favor, and recommend its passage.

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### THIRTY-FOURTH CONGRESS, THIRD SESSION.

January 16, 1857.

[Senate Report No. 308.]

Mr. Slidell made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of the executors of Gen. John Armstrong, deceased, of New York, late minister plenipotentiary of the United States at Paris, praying compensation for extra services performed by him during the continuance of his mission, have had the same under consideration, and now report:

That it appears from the memorial and accompanying papers that General Armstrong, then minister plenipotentiary of the United States at Paris, was, on the 17th March, 1806, appointed by his Government commissioner extraordinary and plenipotentiary in conjunction with James Bowdoin, then minister plenipotentiary at Madrid, "to meet, confer, and treat" with the proper officers of the Spanish Govern-

ment, "of and concerning the territories of the United States, and of His Catholic Majesty, and also concerning all wrongful captures, condemnations, and other injuries for which the parties may be responsible the one to the other, or the one to the citizens or subjects of the other." That on the arrival at Paris of the Spanish envoy said negotiations were commenced, and continued for some months, but no definite period is mentioned.

It further appears from the memorial that the board of commissioners appointed under the treaty with France of April 30, 1803, to examine into and adjust, in connection with the French bureaux, claims of American citizens against France for illegal captures of ships and cargoes, having failed to complete that duty within one year from the date of the ratification of the treaty (the period limited therein), General Armstrong gave his time and attention to the investigation of the claims remaining unacted upon by the commissioners.

On the 7th December, 1821, General Armstrong addressed a letter to the Secretary of State setting forth the grounds upon which he based his claim for additional compensation. That letter was referred by the Secretary to President Monroe for his decision. On the 10th April, 1823, President Monroe declines deciding the case for reasons stated by him at length, the substance of which is that the claim for compensation as commissioner, etc., to negotiate with Spain involved, to some extent, the same principles as a claim in which he was himself personally interested, and therefore he could not act in the case; and further, that the compensation claimed for perfecting the uncompleted work of the commissioners under the treaty of April 30, 1803, should properly be referred to the legislative department of the Government, which alone had authority to decide it.

From that time to the presentation of this memorial this claim seems to have rested without any attempt, so far as the committee are advised, to reassert it.

In considering the first branch of this claim, the committee find that President Monroe, in stating his reasons for declining to decide it, refers to an "analysis of all the claims which had been presented and allowed or rejected since the foundation of the Government," prepared by him some time previously. From a careful examination of the precedents collated in that analysis, and others which have subsequently occurred, the committee have been able to find in no one of them the recognition of a principle broad enough to cover the present claim. The allowance of extra compensation to diplomatic agents of the Government seems to have been based, in every instance, upon the additional expenses necessarily incurred in the performance of the extra duties imposed.

In this case the committee can perceive no such necessity for additional expense. General Armstrong remained at Paris—the court to which he was regularly accredited. All of his negotiations with the Spanish envoy were carried on in that city, and, for aught that appears to the contrary, those very negotiations may have been regarded as a legitimate part of his duty as minister to France, a supposition strengthened by the fact that Paris was selected as the place of such negotiation, with a view to obtaining the aid of the French Government in effectuating its objects.

It is also worthy of remark that Mr. Bowdoin, minister of the United States at Madrid, and colleague of General Armstrong in this special negotiation, does not appear to have asserted any claim for his extra services in that regard, notwithstanding his attention to the business might have involved the additional expenses incident to a trip from

Madrid to Paris. But whether Mr. Bowdoin made such trip or not, his right to additional compensation would seem to stand upon a ground quite as high as that of General Armstrong.

In that day, during the comparative infancy of our Republic, it frequently happened that ministers of the United States accredited to different European courts were associated together in the performance of special services; and yet it does not appear that extra compensation was allowed for such service in any case in which increased expenses had not been incurred by the minister.

In reference to the second branch of this claim, the Secretary of State, in a letter dated December 30, 1856, in reply to one of inquiry addressed to him by the committee, says:

In regard to that clause of the petition which relates to the alleged services of General Armstrong with reference to the claims of citizens of the United States on France, I have to remark that there is no instruction to him on record in this Department authorizing or directing him to perform those services; consequently it is not competent for me to say whether or not, if they were performed as alleged, they were deemed to be within his province as diplomatic agent of the United States or otherwise. It is at least difficult to understand what the nature or extent of those services could have been subsequently to the year assigned for the duration of the commission on the subject of the claims, when the 11th article of the treaty of the 30th of April, 1803, declares that every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards.

From this statement it seems to be very clear that General Armstrong in undertaking, as he alleged, to complete the unfinished business of the commissioners under the treaty of April 30, 1803, not only acted without instruction or direction from his Government at home, but also in violation of the stipulations of the treaty itself.

The permanent interests of any government are best promoted by confining its active agents within the limits of prescribed duty. This principle is especially true in its application to a government like ours, founded upon a constitution and laws in which the powers and duties not only of its principal departments, but of each subordinate agent in those departments, are particularly defined. To compensate a public officer, therefore, whether occupying a high or low station, for the performance of acts not only without the line of his duty, but in derogation of the authority under which he acted, would naturally tend to encourage a spirit of insubordination in the public service, and might lead to serious inconvenience, if not positive mischief, in its results; and when applied to such as are invested with diplomatic functions in foreign countries, remote from the supervision of the Government at home, the dangerous tendency of such a policy becomes the more clearly manifest.

Other cases have occurred, heretofore referred to this committee, in which official agents of the United States in foreign countries have assumed powers and performed acts not only unauthorized by, but against the positive instructions of, the Government at home, and afterwards claimed at the hands of Congress extra compensation therefor; and should the second branch of the claim of General Armstrong be now sustained it would, in the opinion of the committee, encourage on the part of public functionaries abroad a disregard of all limitation upon their own powers and authority, and greatly multiply the number of applications similar to the one now under consideration and those above referred to.

For these reasons, thus briefly presented, the committee are satisfied that on neither branch of the case are the memorialists entitled to relief, and they recommend that the claim be rejected.

[See p. 701.]

January 21, 1857.

[Senate Report No. 315.]

Mr. Fish made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Auton L. C. Portman, late clerk to Commodore M. C. Perry, while in command of the East India Squadron, praying additional compensation for his services as Dutch interpreter during the negotiations with the Japanese authorities, have had the same under consideration, and now report:

That it appears from the memorial that Mr. Portman was the clerk of Commodore M. C. Perry while in command of the East India Squadron, and during the negotiations with the Japanese authorities acted as Dutch interpreter for the United States; that owing to the refusal of the Japanese ministers to conduct the negotiations in the Chinese language a large amount of interpreting and translating was thrown upon and discharged by the memorialist; that the only compensation received by him for those delicate and responsible duties was the salary of \$500 per annum, at which he was rated on the books of the ship; and he therefore asks that such additional compensation shall be now allowed him as, together with that heretofore received, shall be proportionate to the importance of the services rendered.

The statements of the memorial are supported by the certificates of Commodore M. C. Perry, commanding, and Capts. Henry H. Adams, Sidney S. Lee, and Franklin Buchanan, attached to the expedition.

From the report of Commodore Perry in relation to that expedition it appears that the time employed in conducting his negotiations with the Japanese Government embraced a period of a little less than one year, during which, it is reasonable to presume, the memorialist was required, in addition to his regular duties as clerk, also to perform those of interpreter.

In reply to a letter of inquiry addressed by the committee to the Navy Department, the Secretary, under date of July 16, 1856, says:

Clerks in the naval service are appointed by officers entitled to them, with the sanction of the Department. My impression has always been that in selecting their secretaries and clerks the commodores endeavored to secure such as could aid them in their correspondence by their attainments in different languages. I am not aware of any precedent for extra pay on account of translating or interpreting performed by their clerks.

Whilst the committee are disposed to concur with the Secretary of the Navy in the opinion here indicated, that for the ordinary translating and interpreting incident to their position clerks in the naval service should not be entitled to receive extra compensation, yet they can not but regard the present case as resting upon entirely different grounds. Mr. Portman's duties as interpreter in the conduct and negotiation of a treaty between our Government and that distant and secluded Empire involved much and delicate responsibility. They were beyond and additional to his regular duties as clerk to the commodore, and for their performance he is, in the opinion of the committee, properly entitled to additional compensation.

In estimating the amount of additional compensation, the committee are of opinion that \$1,000 would be just and reasonable. They therefore report a bill in his favor for that amount, and recommend its passage.

[See pp. 706, 721.]

January 21, 1857.

[Senate Report No. 316.]

Mr. Fish made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of John H. Wheeler, esq., late minister resident of the United States at Granada, praying the reimbursement of expenses incurred by him for the relief of American citizens in distress in that country, have had the same under consideration, and now report:

The memorial sets forth that a party of American citizens, while crossing the Isthmus en route from California to New York, were attacked by the natives at Virgin Bay, on the lake of Nicaragua, on the 19th of October, 1855. Some of them were killed, others wounded and robbed. That another party of hostile natives, strongly armed, were at the same time collected at San Carlos, on the other side of the lake, who had also fired upon passengers going by that place. Thus hemmed in by hostile forces on each side of the lake, and cut off from the means of access to either ocean, they were compelled to resort to Granada and apply to the memorialist, then minister resident of the United States at that place, for protection and such other relief as they required. That the memorialist promptly afforded them the protection and relief asked for, procured comfortable quarters, and supplied them, to the number of 250, with food for two days and nights. That during their stay at Granada two of their number died and were buried, and on their departure three had to be left behind on account of their wounds.

These statements are fully supported by the affidavit of Dr. W. E. Rust, one of the said party, and also by that of Joseph N. Scott, general agent of the Accessory Transit Company across the Isthmus, who adds that the memorialist "freely gave his time, money, house, and clothes to his suffering countrymen, as some of them were robbed of everything by the enemy at Virgin Bay."

It further appears that the memorialist applied to the Department of State for the reimbursement of those expenses, to which application the Secretary replies, under date of February 5, 1856, that "this Department has no fund from which it is authorized to reimburse such expenditures. Although inconvenience and hardship may be the result of this inability to replace the funds which our diplomatic representatives often advance out of their private means for the relief of their distressed fellow-citizens in foreign countries, the Department has no mode of relief at command, and can only suggest an application to Congress for such aid as the circumstances warrant."

The amount claimed by the memorialist is but \$500, which seems to be quite moderate, and barely adequate to cover the actual expenses incurred; and whilst the committee are unwilling to recommend the adoption of a policy that might encourage our representatives abroad in indiscriminate or wasteful application of charities, under the expectation of reimbursement by the Government at home, yet the peculiar circumstances of this case are such as, in their judgment, to entitle the memorialist to the very small amount of relief asked for. They therefore report a bill in his favor, and recommend its passage.

[See pp. 665, 721.]

February 5, 1857.

[Senate Report No. 359.]

**Mr. Pratt made the following report:**

The Committee on Foreign Relations, to whom was referred the resolution of the Senate of the 19th December, 1856, with the accompanying papers, relative to the claim of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, for additional compensation for diplomatic and judicial services performed by him at various intervals during the years 1838, 1839, 1852, and 1854, have had the same under consideration, and report:

The Secretary of State, to whom the resolution was referred by the committee for information, in his reply, dated January 30, 1857, says:

As to the services of Mr. Brown as *chargé d'affaires* from the 11th of April, 1838, to the 19th of July, 1839; from the 30th of July, 1852, to the 5th of July, 1853, and from the 19th of December, 1853, to the 31st of January, 1854, the records of this Department show that during those periods he was left in charge of the legation, and that he performed the duties devolved upon him in a manner satisfactory to this Government.

In regard to the claim for compensation for judicial services under the act of August 11, 1848, the Secretary adds: "That act has never been construed by the Executive as intending to allow diplomatic agents and consuls in Turkey compensation for such services."

Concurring with the Secretary in his construction of the act of August 11, 1848, the committee are of opinion that Mr. Brown is not entitled to the compensation claimed by him for judicial services during the several periods named in his accounts; and they therefore recommend that that portion of his claim be disallowed. The claim for diplomatic services, however, stands upon different grounds, and being fully supported by the records of the Department of State, entitles him, in the opinion of the committee, to the difference between the compensation heretofore received by him as principal interpreter and that allowed to a *chargé d'affaires* of the United States. They therefore report a bill in his favor for that amount, and recommend its passage.

February 25, 1857.

[Senate Report No. 420.]

**Mr. Weller made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Charles S. Todd, late United States minister to Russia, praying that he may be allowed the amount of certain items which were disallowed by the Department in the settlement of his accounts, have had the same under consideration, and now report:

It appears from the memorial that in the settlement of Mr. Todd's accounts, after his return to the United States, the following items were disallowed, viz:

1. This sum, paid for printed books, consisting of McCulloch's Commercial Dictionary, Arrowsmith's Atlas, Vattel's Law of Nations, Wheaton's International Law, American Almanac, Edinburgh and Quarterly Reviews, maps of Europe and America, Wheaton's Right of Search, Westminster Review, and Life of General Harrison, amounting to the sum of .....

\$78.34

2. For one-half of the expenses paid by him for the Government steamer from Cronstadt to St. Petersburg, on his arrival	\$22.20
3. This sum, expended by him at benevolent concerts given by Count Brenkendoff and Princess Galitzin	21.50
4. For overcharges in bringing the currencies of Russia and Hamburg into dollars and cents	46.40
5. For payment made by John Miller, of London, and included in his account against the legation, to John Samson	5.32
6. For attending the baptism of the infant duke at Zurko, the imperial village, 15 miles from the capital	12.17
7. For expenses of attending military reviews, etc	324.36
8. For overdraft on the London bankers on account of salary	572.09
9. For expenses of office rent, heating and lighting the chancery, and wages of an office messenger	2,471.80

In support of the first item above named, the memorialist states that upon taking charge of the legation at St. Petersburg he found the library destitute of all the books and maps therein specified, with the exception of a worn-out copy of Vattel's Law of Nations, and that the books, maps, etc., purchased by him for the use of the legation were necessary for the proper performance of its duties, and on his return to the United States were left by him for that purpose.

In support of the second, third, sixth, and seventh items, the memorialist shows that the expenses thus incurred were rendered necessary in compliance with the etiquette of the Russian capital, and that a failure to observe that etiquette would have materially lessened the efficiency of our minister at that court.

The eighth item, which was for his salary from the day on which he had audience of leave with the Emperor until the day of his departure from St. Petersburg, is supported by a reference to precedents in the cases of Mr. Dallas, one of his predecessors at the Russian court, 1839, and of Mr. Cass, our minister at Paris, in 1842, in both of which cases the salaries continued for some weeks after the audience of leave.

In reference to the ninth and last item the memorialist shows that an office was necessary for the preservation of the public archives and for the proper transaction of the duties of the legation; that on account of the territorial extent of the city of St. Petersburg the services of a messenger were indispensable to the legation, and further, that similar allowances are made for the missions at London and Paris, at both of which courts the expense of living is far less than it is at St. Petersburg.

The Secretary of State, to whom the memorial was referred by the committee for information as to the facts set forth therein, under cover of a letter, dated 24th of January, 1847, inclosed a statement from the Fifth Auditor's office, setting forth the several items disallowed in the settlement of Mr. Todd's account, with the reasons therefor, and also copies of letters from Messrs. Webster, Upshur, and Buchanan, while they respectively held the office of Secretary of State, together with a copy of a circular letter from the Department of State, dated July 25, 1845.

From a careful examination of these several documents, and a comparison with statements of the contingent expenses of our foreign missions, contained in the published executive documents, it would appear that such allowances have heretofore been made to depend upon no determinate rule, but rather upon the existence of such peculiar circumstances in each case as in the judgment of the Secretary for the time being justified them.

In the opinion of the committee the books and maps embraced in the first item were, under the circumstances, essentially necessary to

the legation at St. Petersburg; and having been purchased by the memorialist for that purpose, and left by him on his return to the United States for the use of the legation, it is but just that the amount thus expended by him for the public benefit should be reimbursed.

The committee are also of opinion that the amount of expenses embraced in the second, third, sixth, and seventh items, resulting from a compliance with the etiquette of the Russian court, necessary to the efficiency of our minister there, and involving additional charges, should be allowed. And further, that the charge for office rent, heating and lighting the chancery, and wages of a messenger, are, under the circumstances, just and reasonable, and should also be allowed.

In reference to the charge for loss in exchange embraced in the fourth item, the Secretary of State, in the letter above mentioned, says:

That actual losses by exchange are allowed by the accounting officers of the Treasury on the rendition of accounts and vouchers to sustain such charges.

And with regard to the charge contained in the fifth item, it appears, from the statement of the Fifth Auditor, above referred to, that it was not rejected, but only suspended for want of satisfactory explanation. As no special legislation seems to be requisite in order to a proper settlement of the two last mentioned items, the committee deem it best to leave them to the action of the Department under existing laws and regulations, without any legislative instruction.

With regard to the charge embraced in the eighth item, the Secretary of State, in the letter above mentioned, says:

The general rule as to the termination of the salaries of ministers is, that they are to cease on the day of the audience of leave. If that rule has been departed from in particular cases, it has been on account of some peculiar circumstances attending them.

In this case the existence of such peculiar circumstances is not sufficiently clear to the minds of the committee to justify them in overruling the action of the Department, and consequently they are not prepared to recommend its allowance.

In accordance with the views above presented, the committee report a bill authorizing the settlement of the accounts of the memorialist, and the allowance of the charges embraced in the first, second, third, sixth, seventh, and ninth items, above mentioned, and recommend its passage.

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[See p. 695.]

February 28, 1857.

[Senate Report No. 432.]

Mr. Weller made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Frederick A. Beelen, secretary of the United States legation to Chile, praying to be allowed the difference between his present salary, \$1,500 per annum, and \$2,000 per annum, from July 1, 1855, to January 1, 1857, have had the same under consideration and now report:

It appears from the petition that in August, 1854, Mr. Beelen was appointed secretary to the legation of the United States in Chile, with

a salary of \$2,000 per annum. That he repaired to his post at once, and continued in the performance of his duties up to January 1, 1857. That some time in September, 1855, he received a communication from the Department of State informing him that under the construction given by the Attorney-General to the act of March 1, 1855, "To remodel the diplomatic and consular systems of the United States," his salary as secretary of legation at Santiago would be only at the rate of \$1,500 per annum from the 1st of July of that year. That the law reducing his salary thus had the effect of an ex post facto law upon him. That the lowest cost of reaching his post from the United States is \$500, and the same amount paid in returning home makes a sum equal to two-thirds of the salary for a whole year. That he is the only officer in the diplomatic service of the Government whose salary was reduced by the act above named, and prays that he may be allowed the difference between \$1,500 and \$2,000 per annum, the amount of salary attached to his office when he accepted it, from July 1, 1855, when the act referred to went into effect, to January 1, 1857.

The statements of the petition are fully sustained by a letter from the Department of State, dated February 23, 1857, in which the Secretary adds:

That the reduction of Mr. Beelen's salary from \$2,000 to \$1,500, whilst he was at a remote capital and in the actual discharge of his official duties, has always been regarded by this Department as a case of peculiar hardship, which was aggravated by the fact that it was not in the power of the Secretary of State to inform Mr. Beelen of the construction placed by the Attorney-General upon the law affecting his salary until after the law was in actual operation, of which Mr. Beelen could not, therefore, be aware until from fifty to sixty days after the reduction of salary took place.

The committee are of opinion that, under the peculiar circumstances of this case, the relief asked for is reasonable and should be allowed. They therefore report a bill in his favor, and recommend its passage.

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March 3, 1857.

[Senate Report No. 444.]

Mr. Fish made the following report:

The Committee on Foreign Relations, to whom was referred the petition of J. C. Tucker, late commercial agent of the United States for Comayagua and Tegucigalpa in Honduras, praying reimbursement of the amount lost and expended by him in his late unsuccessful attempt to enter upon the duties of that office, have had the same under consideration and now report:

The petitioner sets forth in his petition that on the 22d February, 1856, he was appointed and duly commissioned as United States commercial agent to the Republic of Honduras. That he immediately left for that destination via Nicaragua, in which country he was delayed by sickness, during which he was robbed of \$500 and the mules purchased for the land travel. That while traveling across the border and through Honduras he was subjected to much expense, extortion, and delay in his progress to the capital, which he finally reached after a difficult journey of 800 miles. That on presenting his credentials he was rejected on the plea that the authorities there were unacquainted with either the signature of Mr. Marey or the seal of the United States, and thereupon he returned to the United States.

In support of his petition Mr. Tucker refers to the correspondence

between himself and the Department of State, in which the same facts are more fully detailed, together with a translation of the letter of the Honduran minister declining to receive him as United States commercial agent to that Republic.

The petitioner further states that the expenses actually incurred by him amount to the sum of \$954, which, together with the \$500 stolen from him, and as remuneration for his services, he prays may be now allowed to him.

From a letter of the Secretary of State, to whom the petition and accompanying papers were referred, for such information touching this case as the Department might afford, it appears that Mr. Tucker had previously been in Honduras, had business concerns there, and wished to go back with the appointment of commercial agent partly, if not mainly, for the prosecution of his private business. That on his return to that country, although much alarm had been excited in regard to Americans by what had occurred in Nicaragua, he did not do what he ought to have done to allay apprehensions, and even on some occasions, as he admitted to the Secretary, refused to show his passport.

Further, it seems evident from the letter of the Honduran minister that the refusal to recognize Mr. Tucker in his official character was not absolute, but merely suspended on account of a difficulty which might easily have been removed by communicating with the United States consul at Omoa. But this he declined doing, and abruptly left the country on his return to the United States.

Upon a full view of all the circumstances the committee are of opinion that the petitioner is not entitled to the relief asked for, and they therefore recommend that the claim be rejected.

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### THIRTY-FIFTH CONGRESS, FIRST SESSION.

December 22, 1857.

[Senate Report No. 2.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of George P. Marsh, late minister resident of the United States to the Ottoman Porte, praying compensation for extra duties performed by him on a special mission to Greece, and for judicial services, under the act of August 11, 1848, have had the same under consideration, and now report:

That the committee, concurring fully in the views presented in report No. 534, made by the Senate Committee on Foreign Relations, February 20, 1855, hereby adopt the same, and in accordance therewith report back the bill for the relief of the memorialist, and recommend its passage.

[See Senate Report 534, Thirty-third Congress, second session, p. 678.]

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January 14, 1858.

[Senate Report No. 8.]

Mr. Foot made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Frederick A. Beelen, secretary of the United States legation to Chile, praying to be allowed the difference between his present

salary, \$1,500 per annum, and \$2,000 per annum, from July 1, 1855, to January 1, 1857, have had the same under consideration, and now report:

That, having carefully examined the report heretofore made in this case by this committee, in connection with the facts set forth in the accompanying papers, and concurring fully in the views presented in that report, hereby adopt the same, and report back the bill for the relief of the petitioner which accompanied that report, with a recommendation that it be passed.

[See Senate Report 432, Thirty-fourth Congress, third session, p. 693.]

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**February 15, 1858.**

[Senate Report No. 65.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States at Lisbon, praying compensation for diplomatic services, have had the same under consideration, and now report:

That this subject was referred to the Committee on Foreign Relations at the first session of the Thirty-fourth Congress, and a report made, accompanied by a bill for the relief of the claimant. Upon full examination this committee, concurring in the views taken in that report, hereby adopt the same and present it as theirs, and recommend the passage of the bill which accompanies it.

[See Senate Report 182, Thirty-fourth Congress, first session, p. 684.]

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**February 16, 1858.**

[Senate Report No. 70.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of George W. Lippett, United States consul at Vienna, praying compensation for diplomatic services alleged to have been rendered by him, have had the same under consideration, and now report:

That after a due examination of the merits of this claim, and a careful review of Report No. 373, made upon it by this committee on the 26th of July, 1854, accompanied by bill 475, the committee entirely concurring in the views and conclusion therein presented, hereby reaffirm and adopt the same, as follows:

[See Senate Report 373, Thirty-third Congress, first session, p. 669.]

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[See p. 632.]

**February 16, 1858.**

[Senate Report No. 71.]

Mr. Polk made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Commodore Charles G. Ridgely, praying remuneration for various necessary expenditures incurred by him as commanding

officer of the naval forces of the United States on the South American station in 1820-21, have had the same under consideration, and now report:

That on the 17th of January, 1837, Mr. Howard, from the Committee on Foreign Affairs of the House of Representatives, to whom this memorial had been referred, made a report thereon, setting forth concisely the facts of the case and the reasons which induced them to recommend the granting of the relief asked for, together with a bill for that purpose. Upon a review of that report, and its comparison with the papers accompanying the memorial, this committee are satisfied that the merits of the case are properly set forth therein. They therefore adopt it as their report, and recommend the passage of the bill herewith reported.

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[In the House of Representatives, February 9, 1848.]

The Committee on Foreign Affairs, to whom was referred the memorial of Commodore Charles G. Ridgely, praying remuneration for various expenditures incurred by him in 1820-21, respectfully report:

That they have examined the case, and are of the opinion that the memorialist is entitled to relief for the reasons stated in a report made by Mr. Howard, from the Committee on Foreign Affairs, to the House of Representatives, at the first session of the Twenty-fifth Congress, to which report the committee would respectfully refer the House. The committee have prepared a bill for the relief of the memorialist, which they are of the opinion should pass.

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[HOUSE OF REPRESENTATIVES, January 17, 1837.]

Mr. Howard, from the Committee on Foreign Affairs, made the following report:

That during the years 1820 and 1821, whilst Captain Ridgely was in command of the American squadron in the Pacific Ocean, and when war was raging in Peru and Chile, the Spanish viceroy, having been deposed, sought a temporary refuge, with his suite and attendants, on board of the United States frigate *Constellation*, under the command of Captain Ridgely; that he incurred considerable expenses in entertaining these guests: that on other occasions he received distinguished Spaniards on board of his squadron, owing to the prevailing unsettled state of things; and that whilst he was affording them a protection, dictated by humanity and warranted by his instructions from the Navy Department, incurred extraordinary expenses in entertaining them; and that he also performed other services during his cruise not falling within the ordinary duties of the commander of a squadron, but demanded by the unsettled condition of public affairs, and the consequent necessity of protecting the substantial interests of his country.

Upon referring to the Navy Department for a knowledge of the instructions under which Captain Ridgely sailed, for the purpose of ascertaining whether his conduct was justified by them, the committee find that a large discretionary power was given (as ought to have been given) to the commanding officer upon such a distant and delicate duty. The Secretary of the Navy directed him, among other things, as follows:

"In touching at the ports of Chile and Peru, and all others in South America, you will ascertain whether the trading or whale ships of the United States are molested in the prosecution of their voyages, and the causes of such molestation, and afford to them all particular relief in cases of need: and at all the ports you may visit make such display of the ship under your command as shall be best calculated to produce impressions favorable to the interests of the United States."

"You will visit all the United States ships and vessels you may meet with a view to ascertain their situation and whether they have been interrupted in their lawful pursuits; afford them aid, protection, and security consistently with the laws of nations and the respect due to the existing authorities wherever and whenever such protection and aid shall be needed and can be afforded."

The two following examples are selected amongst the services performed by Captain Ridgely under these general instructions, which appear to the committee

to fall legitimately within their scope. In 1821 a revolution took place at Lima, in Peru, and that city fell into the hands of General San Martin. Immediately preceding the fall of the city the viceroy of Spain, General Pezuela, an old gentleman of 70 years of age, and who had been viceroy of Peru for twelve years, was deposed, and made his escape on board an American merchant ship called the *General Brown*. He was accompanied by his son-in-law, a colonel in the service of the King of Spain, and by his confessor. In a day or two after this event the frigate *Constellation* arrived, and Captain Ridgely found a determination existing on the part of the commander of the fleet of Chile to capture the *General Brown*, with the intention of sacrificing the life of this venerable viceroy, and listened, from humanity and policy, to the appeal for protection on board of his ship for the governor who had for so many years presided over the country, and who might, perhaps, be soon called upon to resume his power. All the other ports of Peru were at that time under the Government of Spain, and prudence therefore required that a kind feeling toward the American flag should be maintained in those ports. These persons were received on board of the frigate by Captain Ridgely as his guests, and entertained at his expense until an opportunity was afforded of placing them in safety.

Upon another occasion Mr. Prevost, then at Lima, exhibited to Captain Ridgely a letter which he had received from the master of a large merchant ship belonging to New York, with a very valuable cargo on board, stating that his vessel was taken possession of by the authorities of Guayaquil, and calling for assistance from the civil and military powers of his country. The revolution of Guayaquil at that moment and the absence of all regular government required a speedy and effectual interposition. Although Mr. Prevost was not perhaps strictly accredited according to diplomatic etiquette to the authorities of Guayaquil, yet he was known to be an agent of the American Government, and Captain Ridgely promptly repaired with him to the relief of their countrymen in distress. The union of civil and military interference was too influential to be resisted, and the vessel was released; but the expenses of maintaining Mr. Prevost fell, of course, upon Captain Ridgely, and are properly chargeable to the United States.

These two cases will serve to illustrate the general character of the services rendered by Captain Ridgely under his instructions, and it is unnecessary to enumerate more. The price of provisions is represented to have been enormous. Captain Clack certifies that at the time when the viceroy was received on board flour was selling for \$100 per barrel, and other articles proportionately high. Although no precise data exist in the case from which to compute exactly the expense sustained by the commodore, the committee have endeavored to ascertain it, and believe that \$6,000 would not be more than a fair allowance.

They therefore report a bill for that amount.

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[See p. 649, 764.]

March 31, 1858.

[Senate Report No. 145.]

Mr. Foot made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Frances Ann Macauley, widow of Daniel S. Macauley, late United States consul-general at Alexandria, in Egypt, praying compensation for judicial duties performed by her husband under the act of August 11, 1848, have had the same under consideration, and now report:

It appears from the petition that the late Daniel S. Macauley was, on the 14th day of August, 1848, appointed consul-general of the United States at Alexandria, in Egypt, a port belonging to and within the territorial limits of the Turkish Empire; that he continued to hold that office and perform its duties up to the time of his death, on the 26th of October, 1852; that, as consul-general of the United States at that port, certain judicial duties were devolved upon him by the act of Congress entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman

Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," approved August 11, 1848.

In reply to a letter of inquiry, addressed to him by the committee, the Secretary of State, under date of February 2, 1858, says:

That Mr. Macauley was consul during the period claimed, and that he performed judicial services in that capacity there is no doubt; but whether any services of that kind entitled the minister or consuls of the United States in the Turkish dominions to extra compensation has always been deemed questionable by this Department, which has never sent to Congress an estimate for such compensation.

The performance of the services by Mr. Macauley, and for the time claimed, is thus clearly established by the letter of the Secretary of State. The only question, therefore, remaining to be considered is, whether, under the act aforesaid of the 11th of August, 1848, he is entitled to the compensation asked for.

After prescribing the nature and character of the duties to be performed by the commissioner and consuls of the United States in China, the eighteenth section of the act provides:

That, in consideration of the duties herein imposed upon the commissioner, there shall be paid to him, out of the Treasury of the United States, annually, the sum of \$1,000, in addition to his salary; and there shall also be paid, annually, to each of said consuls, for a like reason, the sum of \$1,000, in addition to consular fees.

By the twenty-second section it is further provided:

That the provisions of this act, so far as the same relate to crimes committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and shall be executed in the dominions of the Sublime Porte, in conformity with the provisions of said treaty, by the minister of the United States and the consuls appointed by the United States to reside therein, who are hereby ex officio vested with the powers herein contained, for the purposes above expressed, so far as regards the punishment of crime.

By the twenty-fourth section it is further provided:

That all such officers shall be responsible for their conduct to the United States and to the laws thereof, not only as diplomatic functionaries and commercial functionaries, but as judicial officers when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers.

From these several provisions of the act under consideration it is evident that the same class of duties and responsibilities are alike devolved upon the diplomatic and consular agents of both countries; and, in the opinion of the committee, it would seem to be but reasonable to suppose that Congress intended to allow the same measure of compensation to each. To determine otherwise would establish an unjust discrimination between public functionaries performing the same duties and incurring the same responsibilities.

For these reasons the committee are of opinion that the claimant is entitled to the relief asked for, and report a bill accordingly.

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[See p. 722.]

April 13, 1858.

[Senate Report No. 176.]

Mr. Seward made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Townsend Harris, consul-general of the United States in Japan, praying for compensation for his services in negotiating a treaty

of commerce between the Kingdom of Siam and the United States, have had the same under consideration and now report:

It appears from the memorial that, after his appointment as consul-general of the United States for Japan, and while preparing to leave the country and repair to his post, Mr. Harris was appointed by the President of the United States a commissioner to negotiate a treaty of commerce with the Kingdom of Siam; that this duty was performed by him in a manner satisfactory to his Government at home, and occupied a period of ten months; during which, not having arrived at his consular post, and no special provision being made for such a case under the general law, he could receive no compensation whatever for his services.

These statements are fully sustained by a letter from the Secretary of State, under date of March 2, 1857, in which the Secretary adds:

It is usual to make compensation to commissioners for negotiating treaties, and I recommend that provision be made for paying Mr. Harris for this service.

Concurring entirely with the Secretary of State in this view, the only question remaining to be considered is as to what amount should be allowed. Referring to the precedents heretofore established, the committee find that it has been usual to allow one year's salary to the officer negotiating a treaty for each treaty negotiated by him, together with a reasonable allowance for the expenses incurred by him, in addition to his regular salary for the time so occupied. Adopting this rule, the committee recommend the allowance of \$10,000 as compensation for his services and expenses in negotiating said treaty, which is deemed to be but reasonable, and they report a bill accordingly.

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April 16, 1858.

[Senate Report No. 192.]

Mr. Slidell, from the Committee on Foreign Relations, made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of T. Hart Hyatt, United States consul at Amoy, in China, praying compensation for judicial services performed under the act of Congress of August 11, 1848, have had the same under consideration and now report:

It appears from the memorial that Mr. Hyatt was appointed consul of the United States for the port of Amoy, in China, in June, 1853, and still holds that office. That by the act of Congress of August 11, 1848, certain judicial duties were devolved upon him, for which a compensation of \$1,000 per annum was allowed by said act in addition to his consular fees. That said compensation was regularly paid to him up to the 1st day of July, 1855, when the act of March 1, 1855, remodeling the diplomatic and consular systems of the United States went into operation. That since that period, for want of an appropriation for that purpose, said compensation has been withheld, and still remains due to him for the interval between the 1st July, 1855, and the 1st January, 1857, when the act of August 18, 1856, entitled "An act to regulate the diplomatic and consular systems of the United States," went into operation.

Your memorialist claims that the compensation for judicial services

under the act of August 11, 1848, was not affected by the act of March 1, 1855. That the fourth section of that act, in changing the mode of compensation from the allowance of official fees to a fixed salary, related exclusively to consular duties and did not embrace those of a judicial character. That the act of August 18, 1856, however, did embrace those duties and repealed the previous mode of compensation, and hence he only claims it up to the 1st January, 1857, when that act went into operation.

It further appears that the memorialist is subjected to a loss of 40 per cent for premium on exchange between Amoy and the United States, and on that score he claims \$1,000 in addition, making in all \$2,500.

The statements of the memorial are fully supported by the Secretary of State, in a letter under date of April 7, 1858, in which the Secretary adds:

Mr. Hyatt, having rendered the services for which he claims compensation, presented on the 1st of January, 1857, an account for \$2,500, dated at Amoy, for compensation for judicial services for one and a half years, namely, \$1,500; and for loss in exchange thereon, amounting to \$1,000. A copy of Mr. Hyatt's dispatch, together with the account and voucher showing the rate of exchange, drawn in conformity with the consular regulations upon the subject, is herewith communicated.

The views entertained by Mr. Hyatt in regard to the question of the repeal of the provisions of the act of August 11, 1848, granting compensation for judicial services, are in conformity with those entertained by this Department under the opinion of the Attorney-General (dated June 2, 1855), a copy of which is also inclosed. (See pp. 18 and 19.)

Concurring in opinion with the Secretary of State and the late Attorney-General as to the proper construction of the act of March 1, 1855, the committee believe the memorialist entitled to the relief asked for so far as the compensation for judicial services are concerned, reserving the question of the propriety of granting the allowance claimed for losses on exchange for future consideration whenever that matter may be again brought before them. They report a bill in accordance with these views and recommend its passage.

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May 11, 1858.

[Senate Report No. 240.]

Mr. Seward made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Auton L. C. Portman, praying compensation for his services as Dutch interpreter for Commodore M. C. Perry, while conducting his late negotiation with the authorities of Japan, have had the same under consideration, and now report:

That, upon a careful review of the report (No. 315) made in this case by this committee at the last session of Congress, and concurring entirely in the views therein presented, they hereby readopt the same, and report a bill in accordance therewith, with a recommendation that it pass.

[See Senate Report 315, Thirty-fourth Congress, third session, p. 659.]

[See p. 725.]

**May 20, 1858.**

[Senate Report No. 266.]

**Mr. Polk made the following report:**

The Committee on Foreign Relations, to whom was referred the claim of the legal representatives of John Forsyth, having maturely considered the same, beg leave to report:

That the late John Forsyth was appointed minister of the United States to the court of Spain on the 16th of February, 1819, and served in that capacity from the 18th February, 1819, the day he entered upon the duties of the office, until the 3d March, 1823, the day it terminated, embracing a period of four years and sixteen days. He was allowed the usual outfit, equal to one year's salary, and his infit, equal to one quarter's salary; also the sum of \$4,313.69 for his contingent expenses during the period of his mission.

Thus stated:

For amount of outfit .....	\$9,000.00
For salary, four years and sixteen days, at \$9,000.....	36,350.00
For contingent expenses, allowed in the adjustment of his accounts...	4,313.69
For infit, equal to one quarter's salary .....	2,250.00

51,913.69

To which is to be added the following items, which entered into his accounts and which were allowed to him, viz:

Amount paid F. C. Fentwick .....	\$200.00
Amount paid for destitute seamen .....	1,319.45
	<hr/> 1,579.45

53,493.14

By warrant in favor of treasurer .....

194.52

53,687.66

To liquidate the above, the following payments were made to him, viz:

To warrants, per register's certificate .....	\$18,309.00
To drafts on Baring Brothers & Co., from 10th September, 1819, to 8th April, 1823, £6.495 4s. 7d., at par, is .....	28,867.67
To amount allowed Thomas L. Brent, as acting chargé d'affaires, during the absence of Mr. Forsyth .....	1,813.86
To warrant on the Treasurer .....	3,289.82
	<hr/> \$52,280.35

Balance due Mr. Forsyth .....

1,407.31

This balance of \$1,407.31 was charged to Mr. Forsyth in the adjustment of his accounts as gain and exchange on the drafts drawn by him on the London bankers, viz:

On £2,025 1s. 3d., per report No. 991 .....	\$882.18
On £1,690 9s. 1d., per report No. 1203 .....	389.44
On £2,779 13s. 5d., per report No. 1332 .....	135.67

1,407.29

The salary of Mr. Forsyth was due and payable to him at Madrid, his place of residence in Spain. The United States deposited money with Baring Brothers, of London, their bankers, which was to be drawn on by Mr. Forsyth, in payment of his salary. Accordingly the committee find that the amount, as above stated, was drawn for by Mr. Forsyth upon Baring Brothers, of London, and that instead of gaining by this sale, Mr. Forsyth actually incurred losses.

In selling his drafts, the pounds sterling English currency, in the

hands of Baring Brothers, were first converted into pesos of Spanish currency, or into francs, of French currency, and then, in stating his accounts by the United States accounting officers, these pesos and francs are changed into the dollars and cents of the currency of the United States.

The committee find that whilst Mr. Forsyth was minister at Madrid the Spanish peso was worth only 36 pence of English currency and only  $66\frac{2}{3}$  cents of United States currency. But in making up the accounts of Mr. Forsyth at the United States Treasury Department, the Spanish peso is charged to Mr. Forsyth as being worth  $40\frac{1}{2}$  pence of English currency, and 75 cents of the currency of the United States. It was, by thus erroneously estimating the peso at 75 cents of United States currency instead of  $66\frac{2}{3}$  cents, its true value, that a seeming gain was shown to have been made by Mr. Forsyth in the sale of his drafts on London. Whereas, in point of fact, he incurred an actual loss, as is shown by estimating the peso at its true value in American currency, which is  $66\frac{2}{3}$  cents.

That the Spanish peso was estimated at 75 cents of the currency of the United States in making up Mr. Forsyth's account at the Treasury Department, a simple arithmetical calculation will at once demonstrate. The process is simply to take the number of pesos realized by the sale of each one of his drafts and multiply the same by 75 cents.

So also, in like manner, an arithmetical calculation demonstrates the value of the peso of Spanish currency to be 36 pence of English currency, as thus:

According to Kelly's Cambist, published in London, in 1821, which is to be found in the State Department, and which is considered to be of unquestionable authority, the English sovereign, or pound sterling, contains 113.01 grains of pure gold; and the quadruple pistole of 1801, or doubloon, contains 360.05 grains. (See Kelly's Cambist, vol. 2, p. 158.) Then we have this proportion: As 113, the number of grains in £1 sterling, are to 240, the number of pence in £1, so are 360, the number of grains in one doubloon, to 765 pence. Thus showing the doubloon to be equal to 765 pence of English currency.

But the doubloon is equal to 16 hard dollars of 20 reals vellon; or, in other words, to 320 reals. (1 Kelly, 317, and 2 Kelly, 88.) And the real contains 34 maraveais. (1 Kelly, 316.) And the dollar of exchange, in Spain, contains 15 reals and 2 maravedis vellon, or 512 maravedis. (See 1 Kelly, p. 317.)

We then state this proportion: As 320 reals, or  $(320 \times 34)$  10,880 maravedis, the number in the doubloon, are to 785, the number of pence in a doubloon, so are 15 reals and 2 maravedis vellon, or 512 maravedis, the number in the dollar of exchange, to 36 pence. Thus the Spanish peso is demonstrated to be equal to 36 pence English currency.

And that 36 pence, English currency, are equal to  $66\frac{2}{3}$  cents of our currency is demonstrated by the following proportion: As 240, the number of pence in the pound sterling, are to 444 cents, the value of the pound sterling in our currency, so are 36 pence to 66.6 cents.

A few of his drafts, the committee find, were sold by Mr. Forsyth for francs of French currency instead of pesos, and as in the case of the peso, so in case of the franc—the latter, in stating his account at the Department of the Treasury was estimated to him at too high a value, or, what is the same thing, the pound sterling was estimated to him as being worth only 25.05 francs, instead of 25.25 francs, its

true value. An examination of the accounts and vouchers will show at what value in francs the pound sterling was estimated to Mr. Forsyth. And what the true value of the pound sterling is in francs is shown thus: The 40 francs coin of France contains 179 grains of pure gold. (See 2 Kelly's Cambist, p. 158.) Of course, 1 franc contains (179 divided by 40, or) 4.475 grains.

We have already seen that the pound sterling contains 113 grains. And to ascertain how many francs there are in £1 sterling we have only to divide 113 by 4.475. The process gives us  $(113 \div 4.475)$  25.25.

Your committee have procured from the Treasury Department a statement showing all the drafts drawn by Mr. Forsyth upon London, and also the amount of gain charged against him upon the same, in making up his accounts, by the accounting officer of the Treasury. They have also procured copies of the vouchers furnished the Department by Mr. Forsyth, showing the rates at which he sold these several drafts respectively, whether sold for pesos or francs. And they have caused elaborate and accurate calculations of the losses and gains which were in fact really incurred or realized upon the sale of each one of them. And they find, that instead of realizing gains upon the sale of each one of them, Mr. Forsyth actually sustained loss upon the sale of all of them except two; and that the aggregate of his losses amounted to \$760.81, while the aggregate of his gains was but \$28.04, showing an excess of loss over gain of \$732.77. Whereas, in the account made up with him at the Treasury Department, he is charged with the sum of \$1,407.29 as gain upon the sale of his drafts on London. It follows, therefore, that he stands charged, in the account as made up with him at the Department, with \$2,140.06 more than he ought to have been charged with. In other words, upon the final settlement of his account, the United States was really indebted to Mr. Forsyth in the last-named sum; which the committee think ought to be refunded to his legal representatives, and they report a bill accordingly.

Your committee also submit herewith their calculations named above.

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May 21, 1858.

[Senate Report No. 269.]

**Mr. Mason submitted the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Samuel Bromburg, late United States consul at Hamburg, praying compensation for diplomatic and extra services, have had the same under consideration and now report:

The memorialist represents that he was duly appointed consul of the United States for the port of Hamburg November 1, 1849, entered upon the discharge of his duties April 16, 1850, and continued therein until December 27, 1855; that during that period the income of his office, averaging about \$1,100 per annum, was insufficient for the support of himself and family; that during his consulate he was often required to act as agent for receiving and forwarding despatches, parcels, and packages for the Department of State, which occupied a large portion of his time and involved some pecuniary expense; that he was also required to perform certain diplomatic services, consisting, as far as specifically presented, of his interposition for the protection of

adopted American citizens against impressment into foreign service, efforts to prevent the introduction of foreign convicts into the United States, and for the general maintenance of the rights of American citizens under existing treaties, and for these services asks that he may be allowed an additional compensation of \$1,000 per annum during his official term.

This memorial appears to have been presented to the House of Representatives on the 23d December, 1856, referred to the Committee on Foreign Affairs, and shortly thereafter by the chairman of that committee transmitted to the Department of State with a request for information respecting the claim and inquiring "whether the Department has the power to pay such claims without Congressional legislation."

The Secretary, under date of January 6, 1857, in reply, says:

By referring to the general instructions to United States consuls and commercial agents, edition of 1838, in use at the time of the appointment of Mr. Bromburg, or to the "instructions" and "regulations," issued in 1855 and 1856, respectively, it will be seen that the duties of consular officers are of a very miscellaneous character, and in the language of the statute of 1792, still in force. "The specification of certain powers and duties \* \* \* to be exercised or performed by the consuls or vice-consuls of the United States shall not be construed to the exclusion of others resulting from the nature of these appointments." Consequently consular officers of the United States throughout the world have been required to discharge duties not differing essentially from those performed by Mr. Bromburg without expectation on their part or of the Department that extra compensation would be allowed for such services.

In performing the services for which Mr. Bromburg now claims compensation he was doing no more than what would have been expected from any other consular officer under similar circumstances. If Mr. Bromburg has been subjected to expenses for postage or freight in the transmission of official despatches or packages, such expenditures will be paid by this Department on the presentation of an account accompanied by proper vouchers.

From this statement of the Secretary it would seem that the memorialist has no well-founded claim for compensation for what he conceives to have been his diplomatic services, those services being properly pertinent to his consular office and strictly within the line of his legitimate duty. And the Department of State having already sufficient authority to reimburse whatever expenses he may have incurred for postage or freight there seems to be no further question for the committee to consider, they therefore recommend that the prayer of the petitioner be refused, and ask to be discharged from the further consideration of the subject.

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June 8, 1858.

[Senate Report No. 310.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Ferdinand Coxe, late secretary of the United States legation at Rio de Janeiro, praying compensation for diplomatic services, have had the same under consideration, and now report:

That, during the first session of the Thirty-third Congress, a bill for the relief of the petitioner was reported to the Senate by this committee, together with a report briefly setting forth the grounds upon

which the claim rested and recommending its passage; upon a reexamination of the case, the committee, concurring entirely in the views therein presented, readopt the same, and report back the same bill and recommend that it pass.

[See Senate Report 378, Thirty-third Congress, first session, p. 672.]

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[See pp. 690, 721.]

June 8, 1858.

[Senate Report No. 311.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of John H. Wheeler, late United States minister to Nicaragua, have had the same under consideration, and now report:

The memorial sets forth that a party of American citizens, while crossing the Isthmus en route from California to New York, were attacked by the natives at Virgin Bay, on the Lake of Nicaragua, on the 19th of October, 1855, some of whom were killed and others wounded and robbed, while at the same time another party of hostile natives, strongly armed, were collected at San Carlos, on the other side of the lake. Thus hemmed in by hostile forces on both sides, and cut off from access to either ocean, they applied to the memorialist, then minister resident of the United States at that place, for protection and relief, which was promptly afforded; comfortable quarters procured and food supplied them (two hundred and fifty in number) for two days and nights.

It further appears that under instructions from the Department of State, dated October 23, 1854, the memorialist was required to aid Jos. W. Fabens, esq., a commissioner appointed for that purpose, in collecting information and taking testimony at San Juan (Greytown), in relation to the conduct of the persons who assumed political control over San Juan del Norte, and also with regard to the claims against our Government on account of property destroyed by the late bombardment of that place by Captain Hollins, of the United States Navy. That, in the performance of this service he was engaged for more than two months away from his proper residence and necessarily subjected to great inconvenience and additional expenses, amounting to the sum of \$273.98.

The memorialist further sets forth that in the fall of 1856, by recall from the Department of State, he returned to the United States, as was then supposed, on a temporary visit. On that occasion he left at the legation personal property to the value of over \$2,000. That this property was destroyed by the allied forces of Guatemala, Honduras, San Salvador, Costa Rica, and a part of Nicaragua.

The memorialist further represents that on his departure for Central America he was instructed by the Department of State to draw upon London for his salary and the contingent expenses of the legation, and for that purpose a credit was opened for him with Messrs. Baring Brothers. That on his arrival in Nicaragua it was found impracticable to negotiate drafts on London; he had, therefore, to make an agent here, who drew on London, and for a time deposited in New York or Washington. That in Nicaragua these drafts could only be negotiated at the reduced value of the currency of the country in

which the peso or dollar was worth only 80 cents for each real dollar drawn for. The amount of his drafts, from October, 1854, to October 1856, was \$14,706, and consequently the loss incurred by him was \$2,941.20.

These statements are fully supported by the testimony filed with the memorial, and may be summed up thus:

1. Reimbursement for amount expended in the maintenance and protection of distressed American citizens crossing the Isthmus .....	\$500. 00
2. Amount of expenses incurred while taking testimony at San Juan del Norte .....	273. 98
3. Value of property destroyed at Granada .....	2, 000. 00
4. Loss in exchanges .....	2, 941. 20
	<hr/>
	5, 715. 18

The first item was embraced in a memorial presented to the Senate at the last session of Congress, referred to this committee, fully examined, and a bill for the relief of the claimant to the amount claimed reported by them. That bill, for want of time, failed to be acted upon by the Senate. Upon a reexamination the committee fully concur in the views presented in that report, and, therefore readopt the same as part of this report.

The other items above mentioned were not embraced in that memorial for the reason, as stated by the memorialist, "that at the time that memorial was presented, in 1857, his accounts were in progress of settlement before the Treasury Department, and it was not until October, 1857, that they were finally closed;" and further, that he was not apprised of the value of his property destroyed at Granada in time for the last session of Congress.

As to the second item above presented, there can be no doubt that a public functionary charged with the performance of extra duties not pertaining to his office, and necessarily involving additional expenses, should be reimbursed to the amount of his expenses thus necessarily incurred.

Upon a similar principle, the third item should also be allowed; for it is obviously the duty of government to protect its public officers engaged in its service in the full and unrestrained enjoyment of all their personal and property rights while so engaged, and on failure to do so, to make good any losses he may have sustained.

With regard to the fourth and last item, the loss on exchange, in the opinion of the committee it would seem to be the duty of the Government, in paying the salaries of its public agents, whether domestic or foreign, so to do it as to make such payment available to the officer to the amount of such salary at the place where he is stationed. It has been usual heretofore to observe this rule, and it would be manifestly unjust to Mr. Wheeler to depart from it in this instance.

The committee report a bill in accordance with the views above presented and recommend its passage. They also report herewith the testimony by which the various items claimed are supported.

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### A.

#### REPUBLIC OF NICARAGUA.

*Granada, December 24, 1855.*

I do hereby certify that I was a passenger on board the steamer *Uncle Sam*, from San Francisco to New York; that on the 19th of October last we were unprovokedly fired upon while at Virgin Bay by the forces of the then Government of Nicaragua; that many were killed, many wounded, and all much alarmed. By

unanimous consent we prevailed upon the agent of the Accessory Transit Company to take us to Granada, where we placed ourselves under the care of the American minister, Colonel Wheeler, who received us as brothers, procured comfortable quarters, and supplied us two days and nights with every necessary. There were 250 of us: 2 died and were buried by the care of Colonel Wheeler, and 2 left in hospital, and 1, a sailor, at his house, by whom he was fed. He also furnished clothes to those who had been robbed at Virgin Bay.

W. E. RUST.

LEGATION OF THE UNITED STATES, *Granada*.

Sworn to before me this 24th December, 1855.

JNO. H. WHEELER.

## B.

REPUBLIC OF NICARAGUA, *Granada*:

I, Jos. N. Scott, do hereby depose that for some years I have been and still am the general agent of the Accessory Transit Company on this isthmus; that on the 19th of October last the passengers on said route were unprovokedly fired upon by a strong force of the army of Nicaragua at Virgin Bay, by which some were instantly killed, many wounded, and all much alarmed. The same party held a strong force at San Carlos, and had already fired on the company's steamer and prevented her passing, by which a lady and child were instantly killed and another wounded.

There seemed to be no escape for the unfortunate, unarmed passengers, as both points of the route were occupied by a strong force. They unanimously entreated me to take them to Granada, the residence of the American minister, Col. John H. Wheeler, as it was impossible, from the number of passengers and being out of provisions, for me to keep them any longer.

When we reached Granada the cholera broke out, and one (Nicholas Carrol, esq., of California) died while in the harbor, and many were sick. I sent for the minister, and he came on board the steamer and informed the passengers that as American citizens they should have every comfort as well as protection. He supplied them (in number two hundred and fifty) with comfortable quarters, and supplied them with food for two days and nights. Two died and were buried at Granada, and three were left, unable to move for wounds—one in Colonel Wheeler's house. He freely gave his time, money, house, and clothes to his suffering countrymen, as some of them were robbed of everything by the enemy at Virgin Bay.

JOSEPH N. SCOTT, *Agent*.

Sworn and subscribed to before me this 13th December, 1855.

JNO. H. WHEELER.

## C.

[Duplicate.]

No. 19.]

DEPARTMENT OF STATE,

*Washington, February 5, 1856.*

SIR: Your dispatches to No. 39, inclusive, are received.

In relation to the expense which you allege in your No. 34 you have incurred in the support of a large number of American citizens in distress who placed themselves under your protection, I have to inform you that this Department has no fund from which it is authorized to reimburse such expenditures. Although inconvenience and hardship may be the result of this inability to replace the funds which our diplomatic representatives often advance out of their private means for the relief of their distressed fellow-citizens in foreign countries, the Department has no mode of relief at command, and can only suggest an application to Congress for such aid as the circumstances warrant.

I am, sir, your obedient servant,

W. L. MARCY.

JOHN H. WHEELER, Esq., etc.

E.

No. 4.]

DEPARTMENT OF STATE,  
*Washington, October 23, 1853.*

SIR: Mr. J. W. Fabens, late United States commercial agent at San Juan de Nicaragua, is about to proceed to that place to collect information and take testimony in relation to the conduct of the persons who assumed political control over it, and to the claims which it is understood some of that community intend to present through other governments to the United States for property destroyed at the late bombardment by Captain Hollins of the United States Navy. You are directed, while on your way to the seat of the Nicaraguan Government, to stop at San Juan and aid Mr. Fabens in performing the duties assigned to him. These duties are particularly designated in his instructions. If there should be no local magistrate before whom depositions can be taken, you are requested to authenticate them in your character as minister of the United States.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JOHN H. WHEELER, Esq., etc.

F.

REPUBLIC OF NICARAGUA,  
*Granada, November 13, 1855.*

I do hereby state that according to the orders of the State Department at Washington, of the 10th of October, 1854, I repaired in December, 1844, to Greytown, or San Juan del Norte, to take testimony of various persons as regards the claimants and amount of property destroyed by Captain Hollins, of the U. S. S. *Cyane*, as will more fully appear by reference to said orders; that the minister of the United States, Col. John H. Wheeler, while on his way to the seat of the Nicaraguan Government, stopped at San Juan and afforded me all and every aid I required in performing the duties assigned to me; that he remained with this sole intent at that place for more than two months, at which time and place living was very high and provisions very scarce.

J. W. FABENS.

[Duplicate.]

G.

No. 32.]

DEPARTMENT OF STATE,  
*Washington, September 27, 1856.*

SIR: The President deems it proper that you should return to the United States, and by his direction I hereby notify you of his determination. You will, therefore, without delay, after receiving this communication, return home, and on reaching the United States you will apprise this Department of that fact.

I am, sir, your, obedient servant,

W. L. MARCY.

JOHN H. WHEELER, Esq., etc.

H.

The undersigned, a native and citizen of North Carolina, states that he emigrated from New Orleans on 11th January, 1856, with an intention of settling in Nicaragua—his profession being that of a planter—and pursuing the cultivation of cotton, sugar, tobacco, etc. He paid out his money for his passage and expenses, and was no way connected with any expedition or force on leaving the United States, and on his arrival in Nicaragua he studiously avoided taking any part in the conflicts which then disturbed the country.

From this cause, after some delay, it was found impracticable to carry out his intention to cultivate the soil, and becoming straightened for funds he was compelled to earn his support by taking employment as a steward in the hospital, under charge of the surgeon-general. The army was pressed for men and he was repeatedly urged to join the force under command of General Walker. This he

utterly refused. On Dr. Ingraham, the surgeon-general, threatening him and ordering that he report himself to the commanding officer at New Granada, he was much perplexed and distressed. In his dilemma he applied to the American minister, then a resident at Granada, for protection in the premises, which was efficiently and promptly afforded, much to the dissatisfaction of the surgeon-general, who sought every mode of annoyance to me, so much that I had to go to the house of the American legation, where I remained during my stay in Nicaragua.

This is only one of many instances of my own knowledge of the efficient and decided action of Colonel Wheeler in behalf of his fellow citizens. On another occasion, to the knowledge of myself and many others, two young men from Wilmington, Del., had enlisted, whose passages had been paid and expenses from New York to Nicaragua, applied for his aid through their friends. He procured their discharge and sent them to their friends and parents.

On the attack of the allied forces of Guatemala, San Salvador, and Honduras, on the city of Granada, on the 12th October, 1856, the plunder, burning of houses, and murder of all Americans was proclaimed. Many fell victims, among them two preachers of the gospel, a young child of Mr. Smith, of New York; Mr. Lawless, a merchant, and others. The legation house, over which the American flag waved, where the wives of Americans had fled for safety, was assaulted. The house being strongly barricaded resisted the attack, while a severe, active, and destructive fire from a few of the Nicaraguan army was very fatal to the assailants. Had they succeeded in effecting an entrance no age, sex, or condition could have escaped. The door was perforated with balls and the flag riddled by their shots. Colonel Wheeler, though prostrated by sickness, was enabled to preserve quiet among his numerous guests, and discountenanced every offensive effort except in self-preservation. On his leaving Granada his house was destroyed; all his furniture, stores, and library were burnt up, entailing a loss of more than \$2,000 to the knowledge of this affiant.

The health of Colonel Wheeler, by the diseases of this climate and exposure of his position, completely failed, and I was compelled to accompany him home, as he was unable to help himself, and on reaching the United States in November, 1856, his life was only preserved by the skill of physicians and the most assiduous attention.

R. J. DARDEN.

This day came before me Redmond Darden, well known to me, and made oath that the foregoing was true to the best of his knowledge and belief.

MOSES KELLY, J. P.

WASHINGTON CITY, *January 15, 1857.*

This certifies that I am well acquainted with R. J. Darden, the affiant to the foregoing statement, and believe him to be a man of veracity and honor.

JN. GRANGER, *Recorder.*

RECORDER'S OFFICE OF GENERAL LAND OFFICE,  
INTERIOR DEPARTMENT, *Washington City, January 16, 1858.*

## I.

CITY OF PHILADELPHIA, PA., *January 18, 1858.*

The undersigned, long a practitioner of medicine in Philadelphia, and at present one of the professors in the Jefferson Medical College, would state that in the months of December, 1856, and January, 1857, I attended at the Ashland House in this city, Col. John H. Wheeler, then recently returned from Nicaragua, as United States minister to that country.

His case was one of complication of disease, brought on by a residence in a tropical climate, and attended by a complete prostration of the nervous system, the consequence of exposure and excitement; the case was one of danger, and demanded all my care and skill. The disease finally concentrating in his right hand he was forced to submit to the severe operation of amputation of one of the fingers of that hand, which I performed on the 18th January, 1857.

I have no hesitation in saying that his disease was consequent to his residence in Nicaragua; his suffering was very acute and dangerous, and his recovery, for a time, very precarious and protracted.

JOSEPH PANCOAST, M. D.

*Letter from the Secretary of State, report from the Fifth Auditor, and other testimony, relating to the memorial of John H. Wheeler, late minister to Nicaragua.*

DEPARTMENT OF STATE,

*Washington, May 7, 1858.*

SIR: I have the honor to acknowledge the receipt of your letter of the 27th ultimo, submitting, in behalf of the Committee on Foreign Affairs, the memorial and accompanying documents of John H. Wheeler, esq., late minister to Nicaragua, praying reimbursements for losses sustained and expenses incurred in the service of the Government.

In relation to that part of Mr. Wheeler's memorial which refers to his protection and support of a large number of his countrymen, who were necessarily thrown upon his hospitality in consequence of the attack made upon them at Virgin Bay, whilst in transit from California to New York, I have to reply that Mr. Wheeler reported these facts at the time of their occurrence to the Department, as you will perceive by referring to Executive Document No. 68, first session Thirty-fourth Congress, Senate, pp. 32, 33. No estimate of the expense which the care of 250 destitute persons imposed upon the minister has been submitted to the Department. Under the peculiar circumstances of the country the amount must have been very considerable. It was not within the power of this office, however highly it might appreciate the humanity and hospitality extended by the minister to his distressed and destitute countrymen, to reimburse the outlay involved thereby. He was therefore referred to Congress, in the anticipation that no difficulty would be experienced in obtaining an appropriation for that object.

In regard to the second item referred to in Mr. Wheeler's memorial, which embraces expenses incurred in taking testimony at San Juan del Norte, in relation to the alleged losses of persons by the bombardment of that place, I have to communicate the copy of a dispatch from my predecessor to Mr. Wheeler, containing his views upon that subject. It is dated 5th December, 1855.

It is just to add, upon this point, that the information derived from the investigations of Messrs. Wheeler and Fabens has been of much value to the Government in disclosing the exaggerated and fraudulent nature of many of the claims for indemnification presented by the inhabitants and other alleged sufferers from the bombardment of Greytown.

As the destruction of his furniture and effects, which forms another item of Mr. Wheeler's claim, occurred after his return from Nicaragua, and as there was not at the time any agent of the United States in Granada, the Department has no official information respecting the nature and extent of those losses other than that contained in his memorial and accompanying papers. When Mr. Wheeler left Granada, he did so under circumstances which warranted him in supposing that his withdrawal was not necessarily permanent. It is presumed that, under such an impression, all of the effects of his domestic establishment were left behind.

The last item claimed by Mr. Wheeler, viz. loss by exchange, will be referred to in a separate communication accompanying this.

Returning the memorial and documents, I have the honor to be, sir, your obedient servant,

LEWIS CASS,

Hon. D. E. SICKLES,

*Committee on Foreign Affairs, House of Representatives.*

DEPARTMENT OF STATE,

*Washington, May 13, 1858.*

SIR: In reply to that part of your letter of the 27th ultimo, respecting loss by exchange on the sale of the drafts of Mr. Wheeler, late minister resident to Nicaragua, I have to inform you that I caused inquiry to be made of the Comptroller of the Treasury, and beg leave to inclose a copy of his reply.

I have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. D. E. SICKLES,

*Of the Committee on Foreign Relations, House of Representatives.*

TREASURY DEPARTMENT,

*Comptroller's Office, May 11, 1858.*

SIR: I have the honor to acknowledge the reference to this office of letter of Hon. D. E. Sickles to the State Department, dated April 27, 1858, with accompanying memorial of John H. Wheeler, late minister to Nicaragua, in which he

claims \$2,941.22. for loss by exchange, with request that I furnish you with a report upon so much of Mr. W.'s memorial as relates to his claim for loss by exchange.

On the 5th instant the House of Representatives passed a resolution requesting the Secretary of the Treasury to furnish copies of the papers on file in his Department in relation to the claim of Mr. Wheeler, for losses by exchange on drafts for his salary, together with the grounds upon which said claim was disallowed by the Treasury Department.

A copy of this resolution was referred by the Secretary of the Treasury to this office for report, which report has just been prepared and transmitted to the Secretary this day.

Inasmuch as the report is full, and will doubtless be satisfactory, and as it will be in possession of the Committee on Foreign Affairs, of which Mr. Sickles is a member, it is suggested that a reference to it may be sufficient for Mr. Sickles's purposes, and thus the labor of copying it and the consequent delay be saved.

If, however, upon this explanation you still desire a special report, I will, with pleasure, cause it to be prepared.

The letter of Mr. Sickles and accompanying papers are herewith returned.

Respectfully,

W. MEDILL, *Comptroller.*

Hon. JOHN APPLETON,  
*Assistant Secretary of State.*

TREASURY DEPARTMENT,  
*Fifth Auditor's Office, May 24, 1853.*

GENTLEMEN: Your letter of this day, inquiring as to the action of this office upon Mr. Wheeler's account, as minister resident to Nicaragua, and the grounds of that action, came to hand this morning. There was no difficulty or uncertainty about Mr. Wheeler's accounts for salary or disbursements, made by him in the line of his duty as minister. All such accounts were properly vouched and allowed in this office as charged and claimed by Mr. Wheeler. The only item of his accounts that presented any difficulty was the charge for loss in exchange. The facts, as they appeared in this office in Mr. Wheeler's case, were these: Mr. Wheeler was authorized to draw upon "Baring Brothers," of London, for his salary, and, of course, to get his money he was forced to sell his drafts in Nicaragua for the highest price he could get. Those drafts were nominally worth par in that country, and were not selling at a discount; but to enable him to sell his drafts at par, he was forced to take the currency of that country also at par. This currency was composed of two kinds; one kind was a coin passing currently in Nicaragua called a dollar, which contained 33 per cent alloy and 67 per cent of pure silver, compared with the United States coin; and, consequently, a dollar of that currency was only worth, commercially, 76 cents. The other currency of that country consisted of United States ten-cent pieces, eight of which was of greater intrinsic value than a local dollar of that country; and thus, by common consent, eight United States dimes passed for a dollar. It appeared that Mr. Wheeler sold his drafts at par, but to do so, was forced to and did take 8 dimes or 80 cents United States coin for each dollar of his drafts, thus losing upon each dollar drawn for 20 cents. The Government was bound to pay Mr. Wheeler in Nicaragua 100 cents to the dollar, United States coin; but as the Government sent no money to Nicaragua to pay his salary and expenses, he was forced to sell his drafts there, and take such money and at such price as he could get. If he had refused to take 8 United States dimes to the dollar, he would have been forced to take a Nicaraguan dollar, which would only have been worth 76 cents, and thus his loss would have been 24 cents to the dollar.

Under those circumstances this office decided that Mr. Wheeler, being a Government agent, was bound to sell his drafts for the highest price he could get, and therefore he was bound to take 8 dimes to the dollar when he could do so. It appeared plain to this office that if the Government had paid to Mr. Wheeler, in Nicaragua, his salary in United States dollars (either in gold or silver), as the Government was bound to do, he would have saved thereby 20 cents on each dollar of his salary, which, under the circumstances, he was forced to and did lose, all of which was caused by drawing bills on London instead of paying him in United States coin in Nicaragua.

This office could not regard this loss in any other light than as loss in exchange, not believing that because, in common parlance in that country, 8 dimes was called a dollar, it really was a dollar, or that it was worth as much to Mr. Wheeler as 10 dimes (his real due) would have been. Thus he was allowed 20 per

cent loss in exchange upon all his drafts sold in that country; but drafts drawn and sold in the United States he was not allowed any loss. Thus you are answered as to what action this office took in Mr. Wheeler's case, and the principles upon which that action was based.

With great respect, I am your obedient servant,

MURRAY MCCONNEL,  
*Fifth Auditor.*

The COMMITTEE ON FOREIGN AFFAIRS.  
*House of Representatives in Congress.*

By a resolution of the House of Representatives, passed 5th May, 1858, "copies of the papers on file in the Treasury Department, in relation to the claim of J. H. Wheeler, late minister to Nicaragua, for losses charged to have been sustained by him by discounts upon drafts for his salary, together with the grounds upon which said claim was disallowed by the Treasury Department," was furnished by the First Comptroller of the Treasury and published. (Ex. Doc., No. 125.) On page 26 of said document is the following certificate:

"I do hereby certify that during the absence of Mr. Wheeler from the United States at Nicaragua as minister, under a general power of attorney, I transacted all his pecuniary matters in this country, such as collecting rents, debts, and his salary. That during the first year the drafts were drawn on Messrs. Baring Brothers, London: and subsequently, by instructions from the State Department, the place of payment was made at the Treasury Department. That under this power of attorney I did draw from said bankers in London, and from the Treasury Department, the amount due Mr. Wheeler for his salary, and Mr. Wheeler from Nicaragua drew on me for the amounts, as he required: that said drafts were sold by him in Nicaragua, to different persons at different times; and from these persons and others I have always understood and believe that the currency of that country was 8 dimes to the dollar, which was paid to Mr. Wheeler for said drafts.

"J. F. BROWN.

"WASHINGTON, October 16, 1857."

"I further certify that Mr. Wheeler did commence drawing on me drafts as soon as he arrived in Central America, to wit, in December, 1854, and continued the same until he left that country in November, 1856.

"J. F. BROWN."

"NOTE.—It is represented to me that Mr. Wheeler purchased property in Washington, where his family continued to reside, to be paid for from his salary. That he appointed Mr. Brown his agent to draw the same and apply it as aforesaid, and in support of his family. It is also represented that Mr. Brown sold a portion at least of said drafts for as high as 11 per cent premium."

The note appended by the Comptroller is not a copy of any paper furnished by Mr. Brown, nor is it believed of any paper on file in the Comptroller's office. The resolution of the House called for "copies of papers on file." The truth of this note, thus surreptitiously interpolated, may be judged from the following affidavit of Mr. Brown:

"I, Joseph F. Brown, do hereby certify that the note appended to a certificate, dated 16th October, 1857, given by me, as printed in Executive Document No. 125, was never furnished directly or indirectly by me to the First Comptroller or to anyone else;

"That to my own positive knowledge Mr. Wheeler at no time ever purchased any property in Washington, to be paid from his salary as minister to Nicaragua; nor was I ever employed as his agent to apply his salary, as aforesaid, in any shape or form for such a purpose;

"That his family did not continue to reside in Washington during his absence in Central America, but accompanied him when he left the United States, except one of his sons at school, who followed him in the spring after his departure in the fall;

"That in the drafts which, as his agent, on London were drawn, no premium was realized by me in the aggregate, but, on the contrary, a positive loss; and that the averments in said note appended to my statement are in every respect untrue.

"And I further certify that at the end of each quarter Mr. Wheeler had overdrawn and was in arrears to me in his drafts drawn on me in Washington while he was in Central America.

"J. F. BROWN.

"Sworn to and subscribed before me this 28th May, 1858.

"THOS. J. FISHER, J. P."

This proves the spirit by which the document was prepared by the First Comptroller, and the gross injustice done by it.

Hon. John B. Kerr, late chargé to Nicaragua, states (see page 8 of Doc. No. 125) that "the only currency of Nicaragua during his official residence there, consisted of American dimes, 8 to the dollar, and single and 2 franc pieces, 4 to the dollar."

In a letter dated Baltimore, 11th July, 1857, to Mr. Wheeler, Mr. Kerr states:

"Let me know what claim you are making in regard to the difference of currency between the two countries and your loss thereby. In every thousand it was two hundred. It will be explained in the papers filed by me."

Gen. Joseph Lane, Delegate in Congress from Oregon, states:

"In transit from Washington to Oregon I have had occasion to pass by the Nicaragua transit route from San Juan del Norte to San Juan del Sur, and found the currency of that Republic, universally paid and received, to be 8 dimes of the United States coin to be equal to the dollar of the country.

"JOSEPH LANE.

"WASHINGTON CITY, May 28, 1858."

[Certificates of M. E. Bradley and Thomas J. Van Dyke, of value of American dollar in Nicaragua.]

I do hereby certify that I resided in Nicaragua during the years 1855 and 1856, and acted often as the agent and private secretary of Mr. Wheeler, the American minister.

That the universal currency of the Republic of Nicaragua is 8 dimes to the dollar, and it is the custom to take them and receive them at that rate.

That a bill of exchange on London or New York commanded no premium, but was par only in Nicaragua.

That in my transactions I had occasion to call on Mr. Wheeler for drafts, and negotiated with others for him, and on no occasion was any premium charged or paid.

THOMAS J. VAN DYKE.

PHILADELPHIA, March 19, 1857.

I do hereby certify that the currency at Granada, Nicaragua, Central America, for the last five years, was 8 dimes to the dollar, and that, although the Government did within the last year enact that 10 dimes should be the legal currency, yet among the people the usual custom was to take and receive 8 dimes.

Witness my hand this 19th March, 1857.

M. E. BRADLEY.

And I further certify that a bill of exchange on London or New York was at par only, and commanded no premium.

M. E. BRADLEY,

*Agent Republic Nicaragua, and was put in possession of the Transit Co. property as Q. M. when seized by Nicaraguan Government.*

The statements are all made by gentlemen of observation and truth, who were on the ground. The statement furnished by Messrs. Eames and Bowlin, in Document No. 125, as to the currency of Venezuela and New Granada, are not pertinent to the point at issue, since neither of them were conversant with affairs in Nicaragua, or were even in the country, and should not weigh against the testimony of Mr. Kerr, General Lane, Mr. Van Dyke, and Mr. Bradley, who were in Nicaragua.

[See p. 725.]

### THIRTY-FIFTH CONGRESS, SECOND SESSION.

February 18, 1859.

[Senate Report No. 380.]

Mr. Polk made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of E. George Squier, late chargé d'affaires of the United States to the Republic of Guatemala, praying additional compensation for extraordinary services performed by him during his mission, have had the same under consideration, and now report:

The memorial sets forth that on the 2d of April, 1849, the memo-

rialist was commissioned as chargé d'affaires of the United States to the Republic of Guatemala, and also formally accredited to the Republics of San Salvador, Nicaragua, Costa Rica, and Honduras, by separate letters to the ministers of foreign affairs of those Governments. That the President also conferred upon him, in due form, full and separate powers to negotiate treaties with the Governments of Guatemala, San Salvador, Nicaragua, Honduras, and Costa Rica. That with the first four of these Republics he concluded important treaties, two of which were ratified by the Senate. That in carrying on correspondence and conducting negotiations with five different Governments at the same time he was compelled to employ two secretaries, for which no compensation was allowed him. That in collecting information with regard to the practicability of a ship canal between the two oceans, through Nicaragua, in accordance with his instructions, he necessarily traversed the State in every direction, and spent considerable sums of money in procuring proper instruments, and many weeks of time. That in June, 1850, he returned to the United States, on leave of absence from the Secretary of State, and while here a new Administration came into power, and he was superseded on the 13th of September following. That upon the settlement of his accounts at the Department he was allowed a salary only to the time of his leaving Central America, together with the usual infinit of a chargé d'affaires.

In consideration of these facts, the memorialist asks that he may be allowed a sum equal to an outfit of a chargé d'affaires to each of the Republics to which he was commissioned, and with which he opened relations; and also for the salary accruing between the 28th June, the date of his leave, and the 13th of September, the date of his recall; and, in support of his claim, refers to allowances heretofore made in similar cases, viz, to Mr. Murray, in 1800; Mr. Madison, in 1804; Mr. Pinckney, in 1806; Messrs. Schenck and Pendleton, in 1852, and Mr. Kerr, in 1854.

It further appears that the Secretary of State, in a letter addressed to the Hon. D. E. Sickles, of the Committee on Foreign Affairs of the House of Representatives, dated April 12, 1858, in answer to a call for information on the subject, fully sustains the statements of the memorial in regard to the "value and importance of the services rendered by the memorialist at a most interesting juncture of our relations in that quarter, and especially in connection with the negotiations which were going on here at the same time with Great Britain;" and after speaking of the energy and zeal which he had exhibited in the public service as being such as justly to entitle the memorialist to the leave of absence asked for and granted by the Department, the Secretary adds:

The precedents referred to in the memorial of Mr. Squier are pertinent to his application. The "letters of credence" and "full powers" bestowed upon the functionaries named were documents of precisely the same character as those hereinbefore mentioned as furnished to Mr. Squier.

In the various precedents cited by the memorialist and referred to by the Secretary there may have been peculiar circumstances which, in the judgment of Congress, justified their allowance. But, in the opinion of the committee, as a general rule the purpose and object for which outfits are allowed to our diplomatic representatives is mainly to furnish the means for fitting up necessary establishments, suited to their grade, at the courts to which they are accredited, without having to draw upon either their salaries or private resources

for that purpose. In this case it does not appear that any such establishments were necessarily fitted up. On the contrary, the very brief period, less than a year, during which the memorialist remained in Central America renders it more than probable that none such were required, except, perhaps, at the court where he chiefly resided while in that country.

In carrying out this view, the committee believe that a reasonable allowance should be made to cover the expenses of the memorialist in going from one court to another, together with clerk hire and other charges incident to the negotiation of the several treaties concluded by him with the Republics of Central America. And in the absence of any certain data from which to ascertain the amount of such expenses, the committee regard the allowance of one additional outfit of \$4,500 as amply sufficient for that purpose, and recommend it accordingly.

With reference to the claim for \$937 for the balance of salary, alleged to be due for the interval between the date of his departure from Central America, 28th June, 1850, to the time of his recall (13th September, 1850), the committee are of opinion that the decision of this question rested properly with the Department. If justified by law and usage in such cases, it would doubtless have been allowed in the settlement of his accounts, unless excluded by special considerations. Unadvised of the peculiar circumstances which may have caused the rejection of this item by the proper accounting officers in the settlement heretofore made, the committee are not disposed to disturb that settlement. They therefore report a bill in accordance with these views, and recommend its passage.

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[See p. 738.]

### THIRTY-SIXTH CONGRESS, FIRST SESSION.

December 22, 1859.

[Senate Report No. 1.]

On motion by Mr. Crittenden,

*Ordered*, That the report from the Committee on Foreign Relations on the claim of Francis Dainese, made at the last session of Congress, be printed and referred to the Committee on Foreign Relations, with bill S. 14.

[In the Senate, March 3, 1859.]

Mr. Crittenden made the following report:

The Committee on Foreign Relations, to whom was referred the bill for the relief of Francis Dainese, have had the same under consideration, and report to the Senate that they recommend the passage of said bill.

For a statement of the case they refer to the accompanying reports made from the Committee on Foreign Affairs of the House of Representatives on the 8th of August, 1856, and on the 5th of March, 1858, respectively.

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[In the House of Representatives, March 5, 1858.]

Mr. Burlingame, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, acting consul, and consul from May 16, 1849, to December 20, 1852, a period of three years seven months and four

days, as appears by the records of the State Department (copies of which have been furnished to the committee), and he claims to be allowed compensation for contingent, traveling, and other expenses and losses as such vice-consul, acting consul, and consul during that period. A part of the amount claimed is for compensation at the rate of \$1,000 per annum, amounting to \$3,595.40, for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as not allowable, because the act of 1848, under which it is claimed, is considered, in their opinion, as not entitling the diplomatic and consular agents of the United States in Turkey to the same compensation therein made for like officers in China; and in this particular the committee concur with the views of that of the Thirty-fourth Congress upon this matter.

Another part of the claim of the memorialist is for the sum of \$635, on account of the contingent expenses of his consulate, for the support whereof an annual appropriation of \$500 is made. Upon a careful examination of this item, and after fully investigating his accounts by transcripts from and inquiries at the Treasury Department, the committee are satisfied there is justly due, on this account, the sum of \$431.49, which should be allowed, this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed and that reported to be due arises from two facts: First, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16th of that year, the commencement of the period of his service; and, second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of \$140 on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the Government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for interest and loss on exchange on his drafts, for money allowed to him as an indemnification for his support of those refugees having American passports at Constantinople, from 1849 to 1851, both inclusive. The committee, after a careful examination of the documents communicated to the last Congress by messages of February 23 and March 3, 1857, as well as those now submitted by the memorialist, and circumstances therewith connected, and after taking under due consideration the statements made by his opponents and the facts set forth, and proofs submitted by the memorialist in refutation thereof, in his communications of 12th September, 1856, and 28th February, 1857, are satisfied that, to do the memorialist justice, there should be allowed to him, in connection with this claim, the additional sum of \$609.11. The committee, however, aware of the objection existing in the minds of many to the payment of interest and losses in the case of any claim on the Government, have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for those items, and therefore advise the memorialist to accept in lieu thereof the allowance proposed in full, as stated in this bill.

It appears to the satisfaction of the committee, from an examination of the numerous public documents above referred to, that on the 29th of July, 1851, while the memorialist was the duly recognized incumbent of the consulate at Constantinople, and was discharging the duties thereof, the persons then having charge there of the affairs of the legation of the United States forcibly, and without proper authority, ejected him from and violated his consular office, and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that he was thereby, and by their persistent interference with his official duties unwarrantably driven from his office, and, for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, was compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at the rate of \$500 per annum, which he paid out of his own funds, and for which he has not been reimbursed; that after a full and protracted examination of the facts of his case, his course was unqualifiedly approved by the then Executive, Mr. Webster being then Secretary of State. (Mr. Webster's decision is fully sustained in a recent letter from the Secretary of State, dated February 27, 1857, to one of the parties implicated, in which the Secretary further declines complying with their request to recognize the legality of their occupancy of the consulate during the period of the forcible ejection therefrom by them or the memorialist.) Moreover, by reference to the opinion of Attorney-General Cushing (September 19, 1855, Vol. VII., p. 512), the memorialist was, at the time he was forcibly ejected, deemed a person invested by the United States with, and exercising, consular authority, subject to the instructions alone of the Secretary of State; and therefore

the officers of the legation evidently had no right to interfere with or to resist him, and having done so, their act was illegal and in direct violation of law. And this view is fully sustained by the opinion of Attorney-General Legare (March 24, 1843, Vol. IV, p. 165): by Judge Story's opinion (United States v. Bachelder, II Gallison, p. 15); and by prominent publicists, such "De Clerq," "Warden," "Borel," "Miltitz," "Kluber," "Moreul," "de Martens," etc. That he was thereupon promoted to the full consulship, and with this higher dignity directed to repair again to Constantinople, bearing with him an order of the Government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel, with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refer:

"NAVY DEPARTMENT, April 13, 1852.

"SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the Government of the United States and the Sublime Porte and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, as well as for other considerations, that a vessel of war should convey him to his destination, from Spezzia or some other convenient port in the Mediterranean. You will therefore direct the commander of one of the vessels in the Mediterranean squadron to hold his ship in readiness to receive on board, at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese, and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

"You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

"I am, sir, very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Commodore S. H. STRINGHAM,

*"Appointed to Command the United States Squadron  
in the Mediterranean, Boston, Mass."*

Through a misapprehension this order was not complied with, and the memorialist remained at Syria, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and the further orders of the Government till December 20, 1852, when, by a change in the administration of the State Department (on the death of Mr. Webster), he received the notice of his recall and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, recognized as such by the State Department, was prevented by the same unwarrantable interference of the officers in the United States legation from performing the functions, and, in consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the consulate. The expense incurred by the payment of the compensation to his agent for the period in question—being one year four months and twenty-three days—amounted to the sum of \$697.90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than \$900 over and above all other expenses for his support and maintenance, during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses, but the committee think it will be just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of \$900 for his traveling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee therefore report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his traveling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of \$4,820.99, made up as follows: \$431.49 for balance of contingent expenses; \$900 for traveling expenses, and \$3,489.50 for all other expenses and as a balance of and a full indemnity for all advances, payments, and losses whatever, as declared by this bill.

[In the House of Representatives, August 8, 1856.]

Mr. Pennington, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, consular agent, and consul from May 16, 1849, to December 20, 1852, a period of three years, seven months, and four days, as appears by the records of the State Department (copies of which have been furnished to the committee), and he claims by his memorial to be allowed the sum of \$10,779.49 for compensation, contingent, traveling, and other expenses, and losses as such vice-consul, consular agent, and consul, during that period. A part of the amount claimed is for compensation at the rate of \$1,000 per annum, amounting in all to \$3,595.40, for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as wholly inadmissible, for the reasons given at large in the case of George P. Marsh, late minister at Constantinople—a case similar in principle, in this particular, to the one now under consideration.

Another part of the claim of the memorialist is for the sum of \$635 on account of the contingent expenses of his consulate. Upon a careful examination of this item, and after fully investigating his account by transcripts from and inquiries at the Treasury Department, the committee are satisfied there is justly due on this account the sum of \$431.49, which should be allowed; this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed and that reported to be due arises from two facts: First, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16 of that year, the commencement of the period of his service; and second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of \$140 on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the Government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for the balance alleged to be due to him on account of advances and payments made by him for the relief of refugees with American passports at Constantinople from 1849 to 1851, both inclusive. The committee have stated this account upon the basis of the allowances actually made to him out of the foreign-intercourse fund, under the directions of the State Department, and they find that to indemnify him fully for these advances and payments there should be paid to him the further sum of \$341.51. It should be stated, however, that this result is arrived at by computing interest, according to the commercial custom at Constantinople, at the rate of 12 per cent per annum. The advances and payments made by the memorialist were not authorized by any preexisting law (there being no law for the relief of distressed American citizens other than seamen); but having been made in good faith and afterwards sanctioned by the Government, there would seem to be a manifest propriety in indemnifying the memorialist fully against loss. The committee, however, are aware of the objection existing in the minds of many to the payment of interest in the case of any claim on the Government and have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for this item, and to advise the memorialist to accept the allowance proposed in full, as stated in this bill. It appears to the satisfaction of the committee, from the examination of numerous public documents in the State Department, that on the 29th of July, 1851, while the memorialist was discharging the duties of the consulate at Constantinople, the persons then having charge there of the affairs of the legation of the United States forcibly and without authority violated his consular office and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that he was thereby, and by their persistent interference with his official duties, unwarrantably driven from his office, and for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at the rate of \$500 per annum, which he paid out of his own funds and for which he has never been reimbursed; that after a full and protracted examination of the facts of his case his course was unqualifiedly approved by the Executive (Mr. Webster being then Secretary of State); that he

was thereupon promoted to a full consulship, and with this higher dignity directed to repair again to Constantinople, bearing with him an order of the Government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refers:

NAVY DEPARTMENT, *April 13, 1852.*

SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the Government of the United States and the Sublime Porte, and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, as well as for other considerations, that a vessel of war should convey him to his destination from Spezzia or some other convenient port in the Mediterranean. You will therefore direct the commander of one of the vessels of the Mediterranean squadron to hold his ship in readiness to receive on board at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

I am, sir, very respectfully, your obedient servant,

WILL. A. GRAHAM.

Commodore S. H. STRINGHAM,

*Appointed to Command the United States Squadron  
in the Mediterranean, Boston, Mass.*

For want of a vessel that could be spared for the purpose, or some other cause, this order was not complied with, and the memorialist remained at Syra, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and further orders of the Government till December 20, 1852, when, by a change in the administration of the State Department on the death of Mr. Webster, he was recalled and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, was prevented by the same unwarrantable interference of the officials in the United States legation from performing the functions, and, of consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the consulate. The expense incurred by the payment of compensation to his agent for the period in question—being one year, four months, and twenty-three days—amounted to the sum of \$697.90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than \$900 over and above all other expenses for his support and maintenance during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses; but the committee think it will be just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of \$900 for his traveling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee, therefore, report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his traveling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of \$4,820.99, made up as follows: \$431.49 for balance of contingent expenses, \$900 for traveling expenses, and \$3,489.50 for all other expenses, and as full indemnity for all advances, payments, and losses whatever, as declared by the bill.

**January 4, 1860.**

[Senate Report No. 4.]

*Ordered*, That the report of the Committee on Foreign Relations (No. 182, Thirty-fourth Congress) be printed.

[In the Senate, May 26, 1856.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

[See Senate Report 182, Thirty-fourth Congress, first session, p. 684.]

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[See p. 690.]

**March 13, 1860.**

[Senate Report No. 134.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of John H. Wheeler, late United States minister to Nicaragua, have had the same under consideration, and now report:

[See Senate Report 311, Thirty-fifth Congress, first session, p. 706.]

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[See p. 665.]

**March 13, 1860.**

[Senate Report No. 135.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the resolution of the Senate of the 19th December, 1856, with the accompanying papers, relative to the claim of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, for additional compensation for diplomatic and judicial services performed by him at various intervals during the years 1838, 1839, 1852, and 1854, have had the same under consideration, and report:

[See Senate Report 359, Thirty-fourth Congress, third session, p. 691.]

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**March 13, 1860.**

[Senate Report No. 136.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Charles E. Anderson, esq., late secretary of legation of the United States at Paris, praying additional compensation for services rendered and expenses incurred by him as acting chargé d'affaires during a portion of the time, have had the same under consideration, and now report:

[See Senate Report 171, Thirty-fourth Congress, first session, p. 683.]

S. Doc. 231, pt 3—46

**March 13, 1860.**

[Senate Report No. 137.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

[See Senate Report 182, Thirty-fourth Congress, first session, p. 684.]

**March 13, 1860.**

[Senate Report No. 138.]

**Mr. Mason made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Townsend Harris, consul-general of the United States in Japan, praying for compensation for his services in negotiating a treaty of commerce between the Kingdom of Siam and the United States, have had the same under consideration, and now report:

[See Senate Report 176, Thirty-fifth Congress, first session, p. 699.]

[See p. 751.]

**March 28, 1860.**

[Senate Report No. 156.]

**Mr. Slidell made the following report:**

The Committee on Foreign Relations, to whom was referred the memorial of Isaac E. Morse, praying additional compensation as special commissioner to New Granada, have had the same under consideration, and report:

The memorialist was appointed by the Government as special commissioner to New Granada, and entered upon the discharge of his duties on the 7th of November, 1856.

He appears to have returned to the United States on the 28th of April, 1857, and to have made a final settlement of his account on the 20th of June, 1857, but the Department of State refused to allow him any compensation beyond the rate of salary allowed a minister resident for the time of his service. His salary having been computed at that rate, he was paid the sum of \$3,572.84.

Not conceiving that this afforded him a fair compensation for an important and special service, the memorialist appealed to the Secretary of State, and presented the following letter from the Hon. William Marcy, the Secretary of State at whose solicitation he had consented to accept the mission:

BALLSTON SPA, *June 27.*

SIR: I have received a letter from the Hon. Isaac E. Morse, the late commissioner to New Granada, in relation to his compensation.

It was understood that his expenses were to be allowed, together with a fair per diem compensation, but the precise rate was not, I think, agreed on.

It was regarded as a highly responsible and difficult mission, and I thought he

might justly claim as liberal a sum as had been paid in any similar case. I had in my mind the allowance made at the Department to Mr. Schenck and Mr. Pendleton, which was, I think, about \$20 a day.

As there had been no particular appropriation for the mission, I expected Mr. Morse would be paid out of the contingent fund for foreign intercourse. This was the usual, if not the universal, mode of payment in such cases.

Very respectfully, your obedient servant,

W. L. MARCY.

Hon. LEWIS CASS, *Secretary of State*.

Although the committee by no means adopt the precedent which Mr. Marcy appears to have had in his mind, they yet deem the duties performed by the memorialist of a most important character, and the mode of compensation in effect to have been fixed by the Secretary of State at the time the service was undertaken.

The committee therefore recommend that the memorialist receive a compensation for his services at the rate per diem of a minister resident, and that there be added thereto his traveling expenses at the rate of \$15 per diem during the entire term of his mission.

There seems, however, to have been some difference of opinion between the Department of State and the memorialist as to the precise date when the mission terminated.

The memorialist arrived in New Orleans, on his return from New Granada, on the 28th of April, 1857, and the Department closed his compensation account as of that date.

It seems, however, that upon the memorialist's arrival in New Orleans he found his family too unwell to permit his leaving them. He therefore telegraphed that fact to the Department of State, with a request that he might be allowed to remain a day or two in New Orleans, on account of his own health and that of his family; in reply to which he was authorized by the Secretary of State to "take his [your] time to come" to Washington.

Allowing, therefore, for this delay on leave, as well as for the time occupied in traveling to and from Washington, the date of the 1st of June, 1857, should be properly fixed for the termination of his mission.

In view of all these circumstances, as well as of the importance of the services rendered, the committee recommend that the memorialist, Isaac E. Morse, be allowed at the rate of \$7,500 per annum during the term of his special mission as commissioner to New Granada, and that he be allowed at the rate of \$15 per diem for his traveling expenses during the entire term of his services as special commissioner as aforesaid.

The committee report a bill in accordance with the foregoing opinions.

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March 28, 1860.

[Senate Report No. 159.]

Mr. Seward made the following report:

The Committee on Foreign Relations, to whom was referred the petition of J. Hosford Smith, late United States consul at Beirut, Syria, "praying an increase of compensation for his services as consul, and compensation for judicial services," report:

The petitioner, in the year 1850, accepted the appointment of consul at Beirut, in Syria, and engaged in trade at that place.

The compensation and perquisites of his office consisted at that time of a salary of \$500, the fees of the consular office, and the privilege of engaging in business.

On the 1st of July, 1854, the compensation of the consul at Beirut was raised to the sum of \$2,000, subject to certain restrictions; and on the 1st of January, 1855, the petitioner, having been recalled by order of the President, gave place to a successor.

The petitioner represents that, during the period of his appointment it became necessary for him to advance large sums from his private means to extend the usefulness of the consulate. He represents, moreover, that he performed certain judicial duties within the intendment of the act passed August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and claims to be entitled to the compensation therein allowed "any person vested by the United States with consular authority in" any port in Turkey.

For the expenses and losses incurred and services rendered, as well as for having founded a trade which he alleges to have brought large additional revenues into the Federal Treasury, asks indemnity and compensation.

While your committee are satisfied that the petitioner has performed his official duties with fidelity, it does not appear proper to acknowledge the principles of public obligation which he has laid down for their guidance.

The compensation of the consulate at Beirut had been fixed prior to the date of his appointment. He admits that he accepted it as an incident advantageous to his commercial business. If, therefore, he expended his own money in extending the influence of the position, it is to be supposed that he was indemnified for the outlay by the actual or prospective fees of office, or profits of commerce. Certainly no citizen could be required, by considerations of patriotism, to expend his own substance to advance the general commerce of his country.

In relation to the compensation claimed by the petitioner for judicial duties alleged to have been performed by him during the term of his consular service, the committee have had their attention called, by a letter addressed by the Department of State to the Committee on Commerce, on the 29th of July, 1856, to the report of the House Committee on Foreign Affairs (House Doc. No. 166, Thirty-fourth Congress, first session) upon the petition of the Hon. George P. Marsh, "asking compensation for judicial services rendered by him under the act of 11th of August, 1848, while minister resident of the United States to the Ottoman Porte."

As the compensation asked by Mr. Marsh depends upon identically the same legal authority with that asked by the petitioner, the committee adopt the facts and reasoning in the report referred to as conclusive against the compensation sought by the petitioner.

It is perfectly plain that ministers and consuls of the United States appointed under and by virtue of treaties with the Ottoman Porte incurred an obligation to perform the services thereby imposed, and must be held to have accepted the salary and perquisites of the said appointments in full compensation of all diplomatic and judicial services imposed upon them by the treaty relations existing between the two countries at the date of their appointment to office.

The Department of State, in the communication referred to, states

that the petitioner discharged the duties of his office with entire faithfulness, and added by his commercial enterprise to the revenues of the Federal Government.

It expresses the opinion that the petitioner should not receive additional compensation for consular or judicial services rendered, or for expenses incurred, and adds that, "in view of all the circumstances of the case, it would be proper that the rate of compensation should commence on the 1st of July, 1853."

In consideration, therefore, that the petitioner has contributed, by his enterprise, to extend the commercial influence of the United States; that the compensation of the consulate at Beirut was increased upon his recommendation; and that the Department of State has recommended an increase of his salary as a gratuity for his services, the committee is of opinion that the petitioner should receive the sum of \$1,500 as an addition to the salary already paid him for services as consul at Beirut from July 1, 1853, to July 1, 1854, and report herewith a bill accordingly.

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**April 3, 1860.**

[Senate Report No. 167.]

**Mr. Polk made the following report:**

The Committee on Foreign Relations, to whom was referred the claim of the legal representatives of John Forsyth, deceased, having maturely considered the same, beg leave to report:

That they fully concur in the report made by the said Committee on Foreign Relations to the Senate of the United States at the first session of the Thirty-fifth Congress, and adopt the same as their report on said claim to the Senate at this present Congress.

[See Senate Report 266, Thirty-fifth Congress, first session, p. 702.]

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**April 11, 1860.**

[Senate Report No. 190.]

**Mr. Polk made the following report:**

The Committee on Foreign Relations, to whom was referred the petition of E. George Squier, praying to be allowed an outfit as chargé d'affaires to each of the Governments of Guatemala, San Salvador, Nicaragua, Costa Rica, and Honduras, and also a balance of salary which he claims to be due, have had the same under consideration, and report:

That having reviewed Report No. 380, made at the second session of the Thirty-fifth Congress by this committee, upon the same petition, they have determined to adopt the same, and herewith submit a bill in accordance with its recommendations.

[See Senate Report 380, Thirty-fifth Congress, second session, p. 714.]

[See p. 742.]

**April 11, 1860.**

[Senate Report No. 191.]

Mr. Polk made the following report:

The Committee on Foreign Relations, to whom was referred the petition of James G. Clarke, praying compensation for his services as chargé d'affaires of the United States at Belgium, have had the same under consideration and report:

The petitioner seems to have acted as private secretary to the minister resident of the United States at Brussels, and in that capacity to have taken charge of the legation during the absence of the minister from September 24, 1856, to the 11th June, 1857, at which time the minister resident resigned.

The petitioner continued to discharge the aforesaid functions until the 27th September, 1858, at which date a minister resident of the United States arrived at Brussels, and his services terminated.

As the petitioner does not seem to have been appointed or acknowledged by the Government of the United States in any diplomatic capacity, there appears no legal obligation to make him compensation, yet in consideration that, from the time that the American minister resigned, on the 11th June, 1857, to the 27th September, 1858, at which date his successor arrived at Brussels, the petitioner appears to have performed the functions referred to faithfully and creditably, the committee deem it proper to award him compensation at the rate per annum of the salary of a secretary of legation at Belgium, in full compensation and indemnity for his services.

They therefore report herewith a bill in accordance with these opinions.

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**April 17, 1860.**

[Senate Report No. 201.]

Mr. Mason made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Jonathan Ely, legal representative of Edward Ely, deceased, praying that the accounts of said Edward Ely as United States consul at Bombay may be settled on just and equitable principles, have had the same under consideration and report:

It is stated by the Department of State that the decedent had been in the service of the United States as consul at Bombay for a period of seven years immediately preceding his death, and that he had discharged his official duties with ability and to the entire satisfaction of the General Government.

His consular accounts with the Government had been settled with the Government to the 1st of July, 1856, and the balance due him paid to his order.

It would appear, however, that owing to the rebellion in India the correspondence of the decedent with the Department of State in most instances failed to reach this country, and it became, therefore, impossible for the decedent to communicate with his Government regularly during the interval between the last settlement of his accounts and the date of his death.

Immediately after his death Hollis Moore, esq., the vice-consul at Bombay, forwarded all the vouchers and other papers of the decedent

to the United States, but the vessel by which they were sent was lost at sea, and the papers and vouchers with her.

As no materials exist for the settlement of the consular account of the decedent according to the rules of the Department, the committee can only recommend that the prayer of the memorialist be granted, and that the Secretary of the Treasury be authorized and directed to settle and adjust the accounts of the decedent as United States consul to Bombay upon just and equitable principles.

The committee herewith report a bill accordingly.

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May 23, 1860.

[Senate Report No. 241.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred "the petition of William H. Vesey, United States consul at Havre, to have refunded to him money paid by him on account of the default of certain bankers in Paris with whom he had deposited funds of the Government," have had the same under consideration and report:

The memorialist has been for twenty-six years employed as consul of the United States at St. Ubes and Lisbon, in Portugal; at Antwerp, in Belgium, and, lastly, at Havre, in France, and produces among other high evidences of fidelity the assurance of the President of the United States, transmitted through the Secretary of State, "that the satisfactory manner in which he has discharged the official duties during the last sixteen years of the consulates at Lisbon, Antwerp, and Havre has justly merited and received the commendation of the Government of the United States."

It appears that the memorialist had been for many years in the habit of depositing the fees derived from his consular office and belonging to the United States in the banking house of Messrs. Greene & Co., to his own credit and at his own risk; and it further appears that this banking house failed on the 27th March, 1857, by which event the memorialist sustained a loss of 7,624*f.* 20*c.*, which amount he paid out of his own funds to the United States, so that no loss whatsoever was sustained by the Government; that since the date of this payment he has received a dividend from Messrs. Greene & Co. amounting to 10 per cent on the balance due him, and leaving unpaid and in default on the ———, 1857, the sum of \$1,318, for which amount he has no security nor any prospect of repayment.

This statement of the memorialist is verified by the clerk of the consulate at Havre and by the Hon. John Y. Mason, late minister of the United States at Paris.

Mr. Mason moreover states that he employed Messrs. Greene & Co. as his own "bankers until they suspended business in the month of March last" [1857]; "that up to the date of their suspension the house had" his "entire confidence, and the very large number of depositors with them shows that confidence was general."

He moreover certifies that the memorialist had—

Often conversed with him on the subject of his safe-keeping of the public money in his hands in the interval between its receipt and disbursement or remittance in the absence of instructions from the Government; and as the provision made by law for the safe-keeping of the public money made by the independent treasury act does not extend to foreign countries, Mr. Vesey's [the memorialist] depositing

such moneys with bankers appeared to me to be judicious and far more secure than to endeavor to keep them in his own custody in a seaport city like Havre, where both at his consulate and lodgings they would have been greatly exposed.

His banking at the banking house of Messrs. Greene & Co. at Havre met my entire approval, and I more than once expressed to him the opinion that without some other means of security being furnished by the Government, that course seemed to me best for the public interests.

I had no right to control the operation, but I thought then, and still think, that, as consul, he used extreme diligence and judicious means to protect the public interest.

In addition, there appears the certificate of several merchants residing and doing business at Havre "that Messrs. Greene & Co., American bankers at Paris, were considered, previous to their failure, highly respectable bankers, and that a large number of our countrymen—travelers, as well as others—deposited funds in their hands for safe-keeping."

Under these circumstances, and upon the evidence quoted, the committee are of opinion that the memorialist has exercised a reasonable degree of vigilance and care in providing for the safety of the public moneys which came into his hands, and that the loss which has been sustained is attributable to no neglect upon his part, but to an accident to which the most prudent persons are liable.

The committee are therefore of opinion that if the facts of deposit and loss by default, as alleged in the memorial, shall be properly proved before the proper accounting officer of the Treasury of the United States, and if the memorialist shall transfer and assign to the Government his claim upon the banking house of Greene & Co. for repayment of the balance appearing due him by their default on this account, that thereupon the Treasurer of the United States should be authorized to repay and reimburse him for his advance on account of the loss sustained by the Government of the United States the sum of \$1,318, with interest thereon from the date when the loss thereof shall appear to have occurred.

The committee have reported a bill accordingly; and they hereby append the petition of Mr. Vesey and the accompanying papers.

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*To the honorable the Senate and House of Representatives:*

The undersigned has, with profound respect, the honor to submit the following declaration and to pray for such relief in the premises as may appear to be justly due.

Your petitioner has been a consul of the United States at St. Ubes and Lisbon, in Portugal; at Antwerp, in Belgium, and, latterly, at Havre, in France, from the year 1835 to 1859, inclusive, making a term of twenty-six years of active and constant duty in the service of his country; and that during that long period of service he has frequently had the privilege of assisting his countrymen, other than seamen, who have been sick, shipwrecked, and in distress, within his consular district, and that he has never asked nor received any reimbursement therefor.

That during the term of his consular service he has, at various times, received considerable sums of money on account of the United States, and that such moneys have always been duly and correctly accounted for.

That in proof of the manner he has conducted the affairs of the trusts confided to him by his country, and the manner in which his accounts have been rendered, he begs leave respectfully to refer to documents A and B, hereunto annexed.

That during the year 1857, acting under instructions from the Departments of State and Treasury, and in pursuance of law, he received sundry sums of money on account of the United States, as fees for official acts performed by him.

That he regularly deposited such moneys in the hands of Messrs. Greene & Co., highly respectable American bankers of upward of forty years' standing, and who always bore the highest character for stability and responsibility.

That the money thus deposited was, at the end of each quarter, withdrawn from

Messrs. Greene & Co. and remitted, under instructions from the Secretary of the Treasury, to Messrs. Baring Brothers & Co., bankers of the United States at London, whose receipt was regularly transmitted by your petitioner to the Secretary of the Treasury.

That on the 27th of March, 1857, the said house of Greene & Co. failed, having in their hands at that time \$1,461.16 deposited by your petitioner, derived from fees of office, and belonging to the United States.

That your petitioner, in order to prevent confusion in his accounts with the Treasury, remitted the full amount to Messrs. Baring Brothers & Co., for account of the United States, from the proceeds of his own salary for the quarter.

That in proof of this he respectfully refers to documents herewith, marked C, as well as to the declaration of the Hon. John Y. Mason, minister of the United States at Paris, marked D, and to the certificate, marked E, of several respectable American merchants residing in France, who knew the standing of Messrs. Greene & Co. as bankers before their failure and to whom the event was as unlooked for and as unexpected as it was to your petitioner.

That your petitioner was not guilty of negligence or want of prudence in the care of the public money; but on the contrary, he humbly conceives the loss arose from circumstances beyond a prudent and discreet control exercised by him.

That Messrs. Greene & Co. have paid your petitioner 10 per cent upon the amount of the public money in their hands at the time of their failure, but as more than two years have elapsed since it took place, and as all hopes of any further payment being made are abandoned by your petitioner, as well as by others having funds in their hands, your petitioner feels impelled to seek relief of your honorable bodies, which he humbly and respectfully trusts may be accorded to him.

And your petitioner therefore prays your honorable bodies to authorize and direct that the sum of \$1,318, with interest thereon, be reimbursed him.

And your petitioner will ever pray.

W. H. VESEY,  
*United States Consul at Havre.*

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A.

[Extract of a letter from the Fifth Auditor of the Treasury Department.]

WASHINGTON CITY, D. C., *August 14, 1858.*

Allow me, sir, to take this opportunity to compliment you upon the uniform neatness and accuracy with which your accounts are made up.

I am, sir, very respectfully, your obedient servant,

T. M. SMITH,  
*Acting Fifth Auditor.*

WILLIAM H. VESEY, Esq.,  
*United States Consul, Havre.*

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B.

DEPARTMENT OF STATE, *Washington, May 14, 1859.*

SIR: Your dispatch (No. 9) of the 15th of February last, in which you request the President's permission to resign the office of consul of the United States at Havre, has been received.

Some delay has unavoidably occurred in acceding to your wish to be relieved of the duties of the consulate in consequence of the difficulty of suitably filling an office of so much importance as the Havre consulate, the duties of which in your hands have been discharged so acceptably to the commercial interests of the United States and to this Department.

I have now to acquaint you that the President has selected as your successor Mr. Simeon M. Johnson, who was formerly United States consul at Matanzas, and has been more recently connected with the judiciary department of his native State.

In accepting your resignation, I am directed by the President to assure you that the satisfactory manner in which you have discharged the official duties during

the last sixteen<sup>1</sup> years of the consulates at Lisbon, Antwerp, and Havre has justly merited and received the commendation of the Government of the United States.

I am, sir, your obedient servant,

LEWIS CASS.

WILLIAM H. VESEY, Esq.,  
United States Consul, Havre.

C.

PARIS, March 23, 1859.

We certify that the account on our books of W. H. Vesey, esq., American consul at Havre, showed a balance in his favor of 7,628f. 20c. (seven thousand six hundred and twenty-eight francs twenty centimes) on the 27th of March, 1857; which sum was then due to him.

GREENE & Co., in liq.

PARIS, March 23, 1859.

I, Thomas Taylor, of Havre, in the Empire of France, do hereby solemnly declare and make oath that I have been many years employed as cashier and principal clerk in the American consulate at this port; that to my positive knowledge Mr. W. H. Vesey, United States consul at Havre aforesaid, was in the habit of depositing in the hands of Messrs. Greene & Co., respectable American bankers of Paris, for safe-keeping, fees received at that office on account of the United States; that on or about the 27th day of March, 1857, Messrs. Greene & Co. suspended their payments, and the amount in their hands so paid to them, belonging to the United States, amounted on this day to 7,628f. 20c., say 7,628 francs and 20 centimes, agreeably to the above declaration, which amount Mr. Vesey paid to the United States from out of his private funds: that since the date of such payment to the United States by Mr. Vesey he has received a dividend from Greene & Co. of 10 per cent thereon, and that for the balance of 6,865f. 40c., say 6,865 francs and 40 centimes, equal to \$1,318.15, say \$1,318.15, Mr. Vesey has no security whatever, or for any part thereof.

THOMAS TAYLOR.

CONSULATE OF THE UNITED STATES OF AMERICA,

*City of Paris, Empire of France, ss:*

On this 23d day of March, 1859, before me, Henry W. Spencer, United States consul at Paris, aforesaid, personally appeared Thomas Taylor, the person described in and who made the foregoing declaration, and made solemn oath that the contents thereof were true, the said Thomas Taylor being personally known to me.

In testimony whereof I have hereunto set my hand and official seal on the day and year aforesaid.

[L. S.]

HENRY W. SPENCER,  
United States Consul.

D.

LEGATION DES ÉTATS UNIS,  
Paris, January 19, 1857.

I certify that since I have been in Paris I employed Messrs. Greene & Co. as my bankers until they suspended business in the month of March last: that up to the date of their suspension the house had my entire confidence, and the very large number of depositors with them shows that the confidence was general.

I further certify that Mr. W. H. Vesey, the consul of the United States at Havre, has often conversed with me on the subject of his safe-keeping of the public money in his hands in the interval between its receipt and disbursement or remittance. In the absence of instructions from the Government, and as the provision made by law for the safe-keeping of the public money—made by the independent treasury act—does not extend to foreign countries, Mr. Vesey's depositing such moneys with bankers appeared to me to be judicious and far more

<sup>1</sup>Should have been twenty-six—St. Ubes 10½ years omitted.

secure than to endeavor to keep them in his own custody in a seaport town like Havre, where both at his consulate and lodgings they would have been greatly exposed.

His banking with the branch house of Messrs. Greene & Co., at Havre, met my entire approval, and I more than once expressed to him the opinion that, without some other means of security being furnished by the Government, that course seemed to me best for the public interests.

I had no right to control the operation, but I thought then, and still think, that as consul he used extreme diligence and judicious means to protect the public interests.

J. Y. MASON.

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We, the undersigned, residing and transacting business in Havre and Paris, hereby certify that Messrs. Greene & Co., American bankers at Paris, were considered, previous to their failure, highly respectable bankers, and that a large number of our countrymen, travelers as well as others, deposited funds in their hands for safe-keeping.

WHITLOCK & PUNNETT.  
 DRAPER & HAGENOW.  
 O. BORMAFFE.  
 WILLIAM HELM.  
 ALBERT N. CHRYSTIC,  
 J. J. APPLETON,

*Late Chargé d'Affairs of the United States at Stockholm.*

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[See pp. 684, 696, 721, 722.]

### THIRTY-SEVENTH CONGRESS, SECOND SESSION.

January 15, 1862.

[Senate Report No. 6.]

Mr. Browning made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of the legal representatives of J. E. Martin, deceased, late acting consul of the United States at Lisbon, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial that on July 19, 1850, on the recall of Mr. J. B. Clay, chargé d'affaires of the United States at Lisbon, the archives of the legation were placed in the hands of Mr. Martin, then the acting consul of the United States at that port; that from that time to June 15, 1851, when Mr. C. B. Haddock, the successor of Mr. Clay, arrived at Lisbon, the entire duties and responsibilities of the legation rested upon Mr. Martin, and were performed by him; that during that time the fees and emoluments derived by Mr. Martin from the consulate were insufficient to pay the current expenses of the office; and that he received no compensation whatever for the additional duties and responsibilities devolved upon him by having the charge of the legation.

The statements of the memorial of the legal representatives of Mr. Martin are fully sustained by a letter from the then Secretary of State, dated February 29, 1856, as to the time during which the affairs of our legation at Lisbon remained in Mr. Martin's charge, and the justice of his claim for compensation is strongly urged in a letter from Mr. Haddock, then United States chargé d'affaires at Lisbon, dated January 18, 1853.

Your committee learn that Mr. Martin died at Lisbon, August 3, 1856, and thereupon the guardian of his three orphan children filed the memorial in their behalf—this claim being their sole inheritance. A bill for their relief was reported to the Senate at the first session of the Thirty-fourth Congress (No. 322), again at the first session of the Thirty-fifth Congress (No. 134), and again at the first session of the Thirty-sixth Congress (No. 273), all of which bills were voted by the Senate. They were all in turn reported on favorably to the House of Representatives, without amendment, but were never reached on the Calendar.

Regarding this case as being within the principle heretofore established in the allowance of similar claims, the committee report a bill for the relief of the memorialists and recommend its passage.

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June 16, 1862.

[Senate Report No. 59.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Isaac R. Diller, late United States consul at the port of Bremen, Germany, praying compensation for moneys expended by him while in the discharge of his official duties, have had the same under consideration, and now report:

It appears from the memorial that Mr. Diller was appointed by the President of the United States and confirmed by the Senate as consul to Bremen in the year 1857; that he took possession of the consulate on the 1st day of August of that year, and that he continued to perform the duties thereof until the 20th day of September, 1861, a period of four years, one month, and twenty days. That during this period he received as compensation for his services the sum of \$2,000 per annum, as provided by the act of August 18, 1856, which was not sufficient to defray his personal expenses, and that he was also called upon to expend his private funds for clerk hire, fuel, and lights, traveling expenses on official business, and the relief of destitute seamen, to the amount of \$4,380.55, a reimbursement of which he asks.

The inadequacy of the salary which Mr. Diller received and the necessity for employment by him of clerks in order to properly perform his official duties is clearly set forth in a letter from Hon. Lewis Cass, Secretary of State, to Hon. G. W. Hopkins, chairman of the Committee on Foreign Affairs of the House of Representatives, dated January 12, 1859:

The compensation attached to the consulate at Bremen [wrote Mr. Cass] is \$2,000 per annum, and the consul is not permitted to transact business. The consular fees, which in 1857 amounted to \$1,177.27, are, under existing provisions of law, paid into the United States Treasury. A large number of American vessels are constantly arriving in Bremen, requiring the immediate attention not only of the consul himself but one or two clerks, and since the establishment of a line of steamers between New York and Bremen the consular duties have been largely increased by the number of American travelers arriving and departing.

The Bremen office is also made, to some extent, a distributing office for parcels and letters transmitted from the Department to the United States consular and diplomatic officers residing on the Continent, the rate of postage being about 50 per cent less upon mail matter sent directly to Bremen than if forwarded via Liverpool. Bremen is also the principal port from which emigrants take their departure to the United States, the number thus leaving amounting in the first ten months and a half of 1858 to 22,522 and for the first nine and a half months in 1857

to 44,951. It will be readily seen that the time of an intelligent consul must be much occupied in furnishing emigrants with information and in attending to their wants. A competent clerk can not be obtained for less than \$600 per annum, which, in consequence of the repeal of the seventh section of the act of August 18, 1856, regulating the diplomatic and consular systems of the United States, must be paid from the compensation provided for the consul. The cost of living in Germany has also, within a few years, largely increased, as will be seen by reference to the accompanying extracts from dispatches of the United States minister at Berlin and the consul-general at Frankfort relating to the consulate at Bremen.

Governor Wright, minister at Berlin, informed the Department, in a dispatch dated September 18, 1858, that the consul at Bremen "can not, with the most rigid economy, live upon his present salary," and S. Richer, esq., consul-general at Frankfort, said, in a dispatch dated October 12 of the same year, that, for reasons which he gave at length, it was his "entire conviction that \$4,000 salary and \$1,000 for office expenses would be no more than a reasonable compensation" for Mr. Diller.

The memorialist states that to procure the services of an American citizen as consular clerk, in accordance with the "regulations," who was acquainted with the language of the country, he was compelled to pay his first assistant \$600 a year, which he did actually pay during the four years that he held the office, and that the German correspondence relating to emigration occupied nearly the whole of this individual's time during that period. To a second clerk he paid \$200 a year, which, he represents, was not a remuneration commensurate with the amount of labor performed but as much as the memorialist was able to pay under the circumstances. The total amount paid by him for clerk hire is shown to have been \$3,305.55.

The memorialist further represents that he was obliged to expend \$120 for fuel and lights for the consular office; that he paid \$350 for the relief of destitute American citizens, many of them sent to him by United States consuls in the interior of Germany that they might be sent home; and that his traveling expenses on official business during the period of his consulate were \$605. These journeys were to Berlin to consult with the American minister there in relation to the compulsory enlistment of American citizens, to Frankfort to consult with the United States consul there on the transfer of German vessels to the American flag during the Italian war, and to the port of Bremen to ascertain the real nationality of vessels for which United States papers were asked to render them neutrals.

The committee having requested the opinion of the Department of State in regard to the above items of expenditure by the memorialist, received in reply a letter from Hon. William H. Seward, Secretary of State, dated April 12, 1862, in which he said:

In regard to office expenses "for fuel and lights," I have to state that the Department has never authorized any consul to charge such expenditures to the Government.

Neither are consuls allowed to charge the Government their "traveling expenses," unless, which is very rarely the case, they are traveling on public business under the special orders of the Department or of a United States legation.

There is no appropriation subject to the disposition of the Department to enable it to refund to ministers and consuls the donations which they may make in charity to destitute American citizens other than seamen. On two occasions a bill for this purpose has passed the Senate but been lost in the House of Representatives, after debate, on the ground that it would lead to a large and constantly increasing expenditure. In this view of the subject the Department fully concurs. Special appropriations have been occasionally made by Congress from time to time for the relief of the consuls at Panama, Habana, Hongkong, and Mauritius for the relief thus afforded to American citizens. At the two places

first named American citizens are often overtaken with sickness and thrown destitute upon the charity of the consul and his countrymen.

At Bremen, also a port from whence a large part of the emigration to the United States takes its departure, and where naturalized American citizens constantly arrive, there is a large and frequent call upon the consul for his charity.

Should it appear that such charitable gifts have been judiciously made, and the proof be such as has been accepted by the accounting officers in adjusting the claims of consuls under similar appropriations to which I have referred above, the Department is of opinion that an appropriation under this head for the relief of Mr. Diller might justly and equitably be made.

In regard to clerk hire I have to state that the repeal of the seventh section of the diplomatic and consular act of August 18, 1856, has operated very severely upon many of the consulates at which the consular business is such as to require the employment of clerks whose compensation must be defrayed by the consul himself from his salary. The communications of my predecessors will furnish you with the "opinion" of the Department on this subject. (See House Ex. Doc. No. 68, Thirty-fifth Congress, second session, pp. 3, 5-13, 15-18, 20, 21, 55-62; also, House Ex. Doc. No. 46, Thirty-fifth Congress, second session, pp. 1-9; see also House Report No. 564, Thirty-sixth Congress, first session, p. 2; also, manuscript letter dated December 12, 1861, of this Department, addressed to Hon. William P. Fessenden, chairman of Committee on Finance, United States Senate.)

The opinions of the Department in regard to the inadequacy of the compensation heretofore paid to the United States consul at Bremen have received confirmation during the present session of Congress, by which it has been increased to \$3,000 per annum.

The circumstances of the case, in view also of the precedents to which I have referred, are such, in the opinion of the Department, as to warrant the recommendation, which is now made, of an appropriation for the relief of the petitioner.

The committee have been unwilling to recognize the claim for fuel and lights; nor can they recognize the claim for travel, except beyond the limits of his consulate. But taking into consideration the inadequacy of his compensation and the meritorious character of much of the services for which the memorialist now seeks remuneration, they think it advisable that the Secretary of State should be directed to audit and settle his accounts on principles of justice and equity, within the limits of \$3,000. They report a bill accordingly and recommend its passage.

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June 24, 1862.

[Senate Report No. 61.]

Mr. Harris made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Andrew Ten Broeck, late consul of the United States at Munich, in the Kingdom of Bavaria, respectfully report:

That on the 12th day of March, 1859, Mr. Ten Broeck, then being the consul of the United States at Munich, with a salary of \$1,000 per annum, was instructed by the Assistant Secretary of State to make certain representations to the Bavarian Government in relation to the compulsory enlistment of American citizens who had emigrated from Bavaria upon their return to that country. That from the date mentioned until the 14th of November, 1861, embracing a period of two years and eight months, a diplomatic correspondence, both voluminous and important in its character and successful in its result, was carried on between Mr. Ten Broeck and the Bavarian authorities. The correspondence itself occupies nearly two volumes of the documents in the State Department.

In view of these facts the committee are of opinion that the salary received by Mr. Ten Broeck as consul is an entirely inadequate com-

pensation for his valuable and laborious services, and they recommend that an additional allowance be made to him at the rate of \$1,000 per annum for the period of two years and eight months, the time during which Mr. Ten Broeck was engaged in the duties aforesaid. The committee have accordingly prepared a bill for that purpose and recommend its passage.

### THIRTY-SEVENTH CONGRESS, THIRD SESSION.

February 14, 1863.

[Senate Report No. 90.]

Mr. Foster, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the petition of Elizabeth W. Lott, respectfully beg leave to report:

That the petitioner is the widow of the late Peter Lott, esq., who was consul of the United States at Tehuantepec, in the Republic of Mexico, at the time of his death, which occurred on the 10th of March, 1862. The memorial sets forth that Mr. Lott received his commission as consul on the 11th of November, 1861, with instructions as to the duties and requirements of his office from the Hon. William H. Seward, Secretary of State; that accompanying these instructions was a paper or document signed by Mr. Seward, containing positive assurances that all the actual necessary traveling expenses of the consul to the place of appointment and back again to the United States at the expiration of his term of office should be paid in full by the Government of the United States; that Mr. Lott received said instructions and document on the 25th of November, 1861, and on the 21st day of December then next he, together with the petitioner, sailed from New York for the port of Aspinwall, and that they arrived at the city of Tehuantepec on the 18th day of January, 1862; that Mr. Lott was enfeebled in health by the discomforts and exposure of his voyage, and on the 10th of March following he died, leaving the petitioner in a destitute condition; that she remained at Tehuantepec for about two months, during which time she performed the duties of the office, and on the 20th of May, 1862, started on her return to the United States, and was forty days in reaching New York; that the entire amount of necessary expenditure in traveling to and from and while residing at Tehuantepec was \$750 and that the amount of salary allowed by law will not equal that sum; that nothing has yet been received either for salary or expenses, and the petitioner asks that one year's salary, \$1,500, may be given to her.

The attention of the Secretary of State was called to this petition by one of the members of the committee, and the Secretary addressed to him a letter, of which the following is a copy:

DEPARTMENT OF STATE,  
Washington, January 13, 1863.

SIR: In reference to the memorial of Mrs. Elizabeth W. Lott, which you left at the Department yesterday, I have the honor to state that her husband, Peter Lott, was appointed consul of the United States at Tehuantepec, on the 11th of November, 1861, with compensation, under the act of August 2, 1861, at the rate of \$1,500 per annum, but neither in his general instructions nor in any paper or document signed by me, accompanying those instructions, was it said that all his actual necessary traveling expenses to the place of his appointment and back again to the United States at the expiration of his term of office should be paid and satisfied in full by the Government of the United States. The 5th

section of the act of August 18, 1856, allows compensation to a consul for the time occupied in receiving his instructions, not to exceed 30 days, and in making the transit between the place of his residence when appointed and his post of duty at the commencement and termination of his official service, and as soon as the Department was enabled to establish the precise periods for which compensation should be paid to Mr. Lott, a letter dated 27th May last, a copy of which is inclosed, was addressed to the Fifth Auditor for his information in the adjustment of the account, which adjustment I understand has been delayed by the continued absence of a statement of the fees received by Mr. Lott while at his post. If Mrs. Lott can furnish such statement, the balance due to the estate of her husband will be paid to his legal representative.

The Department is not aware of any case analogous to that of Mr. Lott's in which Congress has made an appropriation of a year's salary to the legal representatives of a person dying abroad in the service of his country. The memorial of Mrs. Lott is returned herein.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. O. H. BROWNING,

*Committee on Foreign Relations, Senate.*

The committee can discover no good grounds on which the prayer of the petition can be granted, nor can they recommend any appropriation beyond the amount of salary provided by law in the case. That, as the committee understand, will be paid at the Treasury at any time, on complying with the regulations of the Department.

The committee therefore ask to be discharged from further consideration of the petition.

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[See p. 741.]

February 18, 1863.

[Senate Report No. 96.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Henry P. Blanchard, praying compensation for services performed as marshal for the consular court at Canton, have had the same under consideration, and report:

That the memorialist was duly appointed and served as United States marshal for the consular court at Canton, in China, established under the act of August 11, 1848, as is shown by the following copy of a letter on file in the Department of State:

UNITED STATES CONSULATE,  
*Canton, November 26, 1860.*

SIR: At the request of Mr. H. P. Blanchard, desiring me to inform the Department of the period during which he performed the duties of United States marshal at this port, I have to state that Mr. Blanchard entered upon the duties of United States marshal at this port on the 22d day of February, 1858, and continued to perform the duties appertaining to the said office up to the 30th day of August, 1860, the day on which his successor, Mr. F. H. Haskell, was appointed, and whose appointment was approved by Mr. Ward, the United States minister to China.

Respectfully, I have the honor to be, sir, your most obedient servant,

OLIVER H. PERRY,  
*United States Consul.*

Hon. LEWIS CASS,

*Secretary of State.*

The memorialist states that he accepted the appointment as marshal for the consular court under the belief that a compensation of \$1,000 per annum would be paid him for his services. These embraced the perplexing and difficult duties of quelling and settling troubles

on shipboard with mutinous crews, arresting runaway seamen, adjusting claims of Chinese for damages suffered by them at the hands of drunken American sailors, and procuring the release of kidnaped coolies, who were about being taken from Whampoa in American vessels engaged in that inhuman traffic. For these and other services Mr. Blanchard states that he has never received any remuneration, "either from the United States consul or from fees collected, or in any other manner, or from any source whatever." That these services were faithfully performed is shown by the following letter:

BUREAU OF EQUIPMENT AND CLOTHING,

Washington, D. C., November 17, 1867.

Henry P. Blanchard, esq., was performing the duties of United States marshal of Canton and Whampoa while I was in command of the U. S. ship *Portsmouth* in China, and these services were effectually performed.

As Mr. Blanchard has not been able to obtain his pay for these services rendered, I trust that his claim may now receive due attention, and he obtain the usual or allowed compensation.

A. H. FOOTE,

*Rear-Admiral, United States Navy.*

It appears by a letter from the Department of State that when the act of 1848 was passed it was supposed that the officers of consular courts would be remunerated by fees, and that a subsequent act by which the salaries of the marshals of these courts was fixed at \$1,000, in addition to fees, did not go into effect until July 1, 1860.

The claim of the memorialist from the 1st of July, 1860, to the close of his term of service on the 30th of August, 1860, has been paid by a special appropriation made by Congress, that portion of his official duties having been legalized by the act of June 22, 1860. He now asks remuneration for his services from February 22, 1858, to July 1, 1860, at the rate of \$1,000 per annum, amounting to \$2,354.24, that being the balance due him, as the following statement shows:

Original claim for salary from February 22, 1858, to August 30, 1860	\$2,320.00
Amount paid by appropriation from July 1, 1860, to August 30, 1860	165.76

Leaving due the amount of salary from February 22, 1858, to July 1, 1860	2,354.24
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Claims of a similar nature have heretofore been paid. In the deficiency bill approved May 31, 1854, was an appropriation of \$1,781.74 to "Thomas M. Johnson, for his services at the port of Shanghai, from the 9th December, 1851, to the 15th September, 1853;" and the consular and diplomatic bill approved May 26, 1860, contained an item, passed on the strong recommendation of General Cass, then Secretary of State, by which \$4,760, or so much thereof as might be necessary, was appropriated "to enable the Secretary of State to defray the cost of the prison ship at Canton, in China, from the 1st day of January, 1854, to the 1st day of January, 1857, and for compensation of the marshal of the consular court at Canton, from January 1, 1854, to the 15th of December, 1857."

It appears that the memorialist was the successor of Mr. James P. Cook, who was by the above act remunerated for his services as "marshal of the consular court at Canton from January 1, 1854, to the 15th of December, 1857." The rebellion having made it necessary for foreigners to leave Canton, the functions of the consular court were suspended from that time until the February following, when the services of the memorialist commenced. While the predecessor of the memorialist has thus been paid by special legislation, his successor received a salary under the act of June 22, 1860.

When the claim was before the Senate a few weeks since, it was not denied that in justice and equity the memorialist was entitled to the relief asked for; but it was ruled out of order as an amendment to the deficiency bill, and it was suggested to be a proper case for a private bill. Since then Mr. Blanchard has petitioned for relief.

Your committee, after a full examination of the case, was of the opinion that the facts and the precedents cited show that the memorialist is entitled to relief, and report a bill accordingly, the passage of which they recommend.

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[See p. 716.]

February 25, 1863.

[Senate Report No. 107.]

**Mr. Sumner made the following report:**

The Committee on Foreign Relations, to whom was referred House bill No. 622, for the relief of Francis Dainese, with accompanying papers, praying compensation for judicial services performed by him while consul at Constantinople, under the act approved August 11, 1848, have had the same under consideration, and now report:

That this case has been for many years before Congress; that the Committee on Foreign Affairs in the House of Representatives having considered it and decided in its favor, offered an amendment to the deficiency bill on the 8th of February, 1854, which was adopted, in Committee of the Whole and in the House, but this amendment dropped with the bill, which failed in the Senate; that subsequently the same amendment was attached to the civil and diplomatic bill in the House of Representatives, but was struck off in the Senate; that two reports in favor of the claim were made by the Committee on Foreign Affairs in the House of Representatives, one by Mr. Chandler, of Pennsylvania, and the other by Mr. Burlingame, of Massachusetts, and that during the present session another report in favor of it has been made by the same committee.

It appears from the records and files of the Department of State that the claimant was the recognized incumbent of the United States consulate at Constantinople from the 16th of May, 1849, to the 20th of December, 1852. The present claim is for compensation during this period, on account of alleged judicial services under the statute of 1848. In order to determine the validity of this claim it will be necessary to consider carefully the statute under which it is made. The differences of opinion seem to have arisen from inattention to this statute.

The statute is entitled "An act to carry into effect certain provisions in the treaties between the United States and China, and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and was approved August 11, 1848. (9 Stat. L., 276-280.) By the first section the commissioner and consuls of the United States appointed to reside in China are vested with judicial authority. In subsequent sections (making seventeen in all) this jurisdiction is declared and defined, both in criminal and civil affairs. The commissioner, in addition to his power to make regulations and decrees—

is authorized to hear and decide all cases, criminal and civil, which may come before him under the provisions of this act, and to issue all processes necessary to

execute the power conferred upon him. And he is hereby fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon justifiable grounds. (Sec. 13.)

The commissioner is further authorized—

to establish a tariff of fees for judicial services, which shall be paid by such parties and to such persons as the said commissioner shall direct. (Sec. 17.)

After declaring and defining the judicial duties of the commissioner in China and the consuls there the statute proceeds to fix the compensation in addition to salary, as follows:

That in consideration of the duties herein imposed upon the commissioner there shall be paid to him out of the Treasury of the United States, annually, the sum of \$1,000 in addition to his salary; and there shall also be paid, annually, to each of said consuls, for a like reason, the sum of \$1,000 in addition to consular fees. (Sec. 18.)

It will be observed that the statute thus far is exclusively applicable to the commissioner and consuls in China. Nothing is said about Turkey, and the compensation is "in consideration of the duties herein imposed." At last we have the following section, by which certain duties, different from those already mentioned, are conferred upon the minister and consuls of the United States in the ports of Turkey:

*And be it further enacted*, That the provisions of this act, so far as the same relate to crimes committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and shall be executed in the dominions of the Sublime Porte, in conformity with the provisions of said treaty, by the minister of the United States and the consuls appointed by the United States to reside therein, who are hereby, ex officio, vested with the powers herein contained for the purposes above expressed, so far as regards the punishment of crime. (Sec. 22.)

On looking carefully at this section two things will be observed: First, that the duties of the minister and consuls in Turkey are restrained to cases of crimes, and, secondly, that nothing is said with regard to any compensation in addition to salary. Had the same large judicial duties, embracing civil as well as criminal cases, which had been conferred upon the commissioner and consuls in China been also conferred upon the minister and consuls in Turkey, it might have been reasonable to allow the latter officers the same compensation which is allowed to the former. From the equality of services it might then have been argued that there should be an equality of compensation. But it is obvious on the face of the statute that there is no such equality of service. The two cases differ essentially. It was probably on the ground of this difference that the statute made an essential difference with regard to the compensation. In the one case compensation is expressly allowed; in the other case nothing is said on the subject.

The conclusion is clear that, according to the statute, certain limited services are required of the minister and consuls in Turkey, for which no compensation is provided in addition to salary. There is not a word in the statute to sanction any such compensation.

This interpretation of the statute is in harmony with the opinions of the Department whenever the question has been presented. Without stopping to adduce the opinions of Mr. Marey and Mr. Cass, communicated to committees of Congress, it will be enough to quote the language of Mr. Seward in a letter bearing date February 23, 1863,

addressed to the chairman of the Committee on Foreign Relations, with reference to the present case, as follows:

It has never been the opinion of the head of this Department that the law authorized any special compensation, other than their respective salaries or fees, to the commissioner or minister in Turkey, or to our consular officers in that country or its dependencies, for any services which they might be required to perform under the provisions of the twenty-second, twenty-third, and twenty-fourth sections of the act of August 11, 1848.

There are, however, two precedents of allowances by Congress in cases asserted to be similar to the present. The first is the case of D. S. Carr, minister at Constantinople, who is said to have been paid for similar services rendered in the same Kingdom, and about the same time. But a careful consideration of this case takes from it all character as a precedent. It appears that Mr. Carr, on his return from Turkey, in his accounts against the Government, made a claim for judicial services; but this item, with others, was rejected at the Treasury Department as not allowed by law. But at last an amendment was fastened upon the civil and diplomatic bill at the first session of the Thirty-second Congress which, it is asserted, covered the claim for judicial services. There is nothing in the language of the amendment as it finally passed which could give a hint of any such claim. It is as follows:

To compensate Dabney S. Carr for expenses incurred while in the diplomatic service of the country, to be allowed in the settlement of his accounts with the Government, \$7,144. (10 Stat. L., 89.)

It is difficult to see how an appropriation in such general terms for expenses incurred can be made a precedent for an appropriation on account of alleged services. But the claim of Mr. Carr was on account of expenses, part of which were incurred anterior to the statute of 1848, so that, if it be recognized as a precedent, it must authorize an allowance of compensation for judicial services anterior to the statute as far back as the treaty with Turkey, in 1830, under which these judicial duties were first established.

The other precedent is that of D. S. McCauley, consul-general at Alexandria, a port within the territorial limits of the Turkish Empire, whose widow, after his death, was paid \$4,260 for judicial services under the statutes of 1848. (11 Stat. L., 567.) The bill for this payment originated in the Senate; but when it is considered that it was in favor of a widow, its value as a precedent will not be such as to establish a rule for the Senate in all subsequent cases. It must be classed as a widow's bill.

The two precedents adduced in favor of the claim may be disregarded, at least so as to leave the question open to the judgment of the Senate.

If there were any doubt as to the meaning of the statute from an examination of its text, that doubt would be removed by a consideration of the consequences which would ensue from the interpretation which is given to it by the claimant. If his claim is valid, then will all other consuls in the ports of Turkey, at least from the date of the statute of 1848, if not from the date of the treaty with Turkey in 1830, be entitled to the same allowance. By the statute it is provided that "the word consul shall be understood to mean any person vested by the United States with and exercising the consular authority in any of the five ports in China named in the treaty, or in any port in Turkey." It is impossible, of course, to make any discrimination between

the consuls at these "ports." What is just for one is just for all; nor can the allowance be limited in time. It must be made to our consuls at all these ports and for all the time since the statute if not since the treaty itself. Smyrna, Beirut, Candia, Cyprus, Alexandria, Tripoli, and Tunis can not in this respect be distinguished from Constantinople, nor can the present claimant be entitled to more consideration than his successors in office. Jerusalem, though a city of Turkey, is not a "port;" but there are vice-consuls or consular agents at Jaffa, Acre, Dardanelles, Trebizond, Rhodes, Gallipolis, all "ports" of Turkey. It is obvious that the payment of this claim would open the Treasury to other claims having the same foundation, whose sum total must be reckoned at many thousand dollars.

If the claim had been presented on the ground of services actually rendered, the case might have a different aspect. The evidence of such services might be urged to justify an appropriation according to the value of such services (*quantum meruit*), although it is difficult to see how any such services could be regarded as other than what the claimant was obliged to render in the discharge of his consular duties. But it does not appear from any of the papers in the case that any judicial duties were actually performed by the claimant, whose case is rested exclusively on the statute which, it is assumed, allows this additional compensation, even if no judicial duties have actually been performed. Mr. Seward, in his letter to the chairman of the committee, dated February 23, 1863, says that there is no evidence at the Department of State that these judicial services were actually performed by the claimant. His language is as follows:

The judicial services which these officers have been required to perform, certainly until a comparatively recent period, have been of rare occurrence; and there is nothing upon the records or files of the Department, as it is believed, to show that Mr. Dainese was ever called upon "to execute any of the provisions of the act so far as the same relate to crimes committed by citizens of the United States in Turkey."

After careful consideration of the case the committee are constrained to report the House bill back to the Senate with the recommendation that it do not pass.

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### THIRTY-EIGHTH CONGRESS, FIRST SESSION.

January 12, 1864.

[Senate Report No. 2.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the petition of Henry P. Blanchard, praying for compensation for services performed as marshal for the consular court of Canton, have had the same under consideration and report:

That after consideration of the case, the committee have adopted a report on this case, made by Mr. Sumner, in behalf of the committee, February 18, 1863, which has been acted upon in the Senate.

[See Senate Report 96, Thirty-seventh Congress, third session, p. 736.]

## THIRTY-NINTH CONGRESS, FIRST SESSION.

[See p. 726.]

April 5, 1866.

[Senate Report No. 53.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the petition of James G. Clarke, have had the same under consideration, and now submit the following report:

Toward the close of the summer of 1856 Hon. J. J. Seibels, then minister resident of the United States in Belgium, received from the Department of State permission to quit his post for a leave of absence at home, provided he should find a citizen of the United States competent, in all respects, to fulfill the duties of the mission during this period, to whom he was by the Department authorized in advance to transfer the seals of the legation, the choice of the person being left, as is customary, to the judgment of the minister. Mr. Seibels appointed for this purpose Mr. Clarke (giving his reasons for so doing in a dispatch dated September 18, 1856), an American gentleman, who had already passed several months in Brussels, and whom he had previously induced to accept an unpaid attachéship, in which connection Mr. Clarke had already rendered various service to the mission, especially from his facility in speaking and writing the French.

Thus authorized by the Department of State, the minister resident undertook, in taking leave of the minister of foreign affairs in Belgium, on the 18th September, 1856, to present to him Mr. Clarke as the duly appointed *chargé d'affaires ad interim*, placing him, by this act, in official relations with the Government of the King. On the same day the archives and property of the legation were committed to his care by the minister, and Mr. Clarke assumed the responsibility of the rent of the furnished house which had been occupied by him, and by his predecessor, as the residence of the legation. Immediately after this Mr. Seibels left for the United States, assuring Mr. Clarke that on his arrival in Washington he would at once procure an official sanction of the appointment by the Secretary of State (Mr. Marey), and accordingly, after an interview with the latter, wrote to Mr. Clarke to say that the Secretary had sanctioned the appointment, with the assurance that he should be recognized as *chargé d'affaires*. With this understanding Mr. Seibels continued his journey to Alabama, where he spent the leave granted him, and procured its extension to the 11th June, 1857, when, in place of returning to his post, he sent in his resignation. Mr. Marey, in the meanwhile, overlooked the confirmation of the appointment which, it is understood, he had approved; while Mr. Clarke, sensitive about his position, sought, through the minister in Alabama, to remind the Secretary of his omission. The neglect was not, however, repaired in the last months of Mr. Marey's service, nor did it receive the attention of Mr. Cass during his three months of office which preceded the 11th of June, 1857, when Mr. Seibels's resignation left Mr. Clarke to await by every mail, for a period of fifteen months, the announcement of his successor.

The President, however, failed to name anyone until the autumn of 1858, so that Mr. Clarke, expecting weekly to be relieved and to return to the United States, deferred offering any demand for salary until he should know the duration of his period of service.

When he reached Washington, in January, 1859, he was informed by the Department of State, and very unexpectedly to himself, that,

as no confirmation of the appointment had been made, he had only to address himself to Congress, which he immediately did. Mr. Mason, then chairman of the Committee on Foreign Relations, on referring to the Department of State for the facts in the case, received an answer from the Secretary, Mr. Cass, which closes as follows:

While the propriety of granting to Mr. Clarke the compensation he claims is left entirely to your committee, I deem it but justice to that gentleman to express the conviction that he performed the duties assigned to him by Mr. Seibels faithfully and creditably, during the period specified in his memorial, which, in accordance with your request, is herewith returned.

A letter addressed at this period by the minister, Mr. Seibels, to Mr. Cass, will show both the character of the service rendered by Mr. Clarke, and Mr. Seibels's appreciation of them. He writes (January 17, 1859) as follows:

Upon granting me leave of absence from my post at Brussels, as minister resident of the United States, in the autumn of 1856, your predecessor instructed me to be careful to leave the property of the legation in safe hands. There being no consul of the United States at Brussels, and our countrymen requiring daily official attention, it seemed to me indispensable that the legation should be kept open for their benefit, if for no other purpose. Fortunately, at the time I had attached to it, and acting as secretary, a gentleman whose education, intelligence, and high character fully commended him to me as a most suitable person to take charge of the seals of the legation, for, as I then supposed, but a brief period. This was Mr. James G. Clarke, whom I now commend to your favorable consideration.

He is a gentleman of the highest attainments, speaking with the ease, fluency, and accuracy of a native French, German, and Italian—in fact, most of the continental languages.

I have the best evidence before me that he discharged the duties during the time the legation was in his care, a period of two years, with signal success, both as regards his intercourse with the Belgian Government and our own countrymen.

Upon my arrival at Washington, in October, 1856, I acquainted Mr. Marcy of the manner in which I had disposed of the legation, and he gave it his sanction, and said that Mr. Clarke should be recognized in the capacity I left him: that is, *chargé d'affaires ad interim*. Whether this has been done or not I do not know; but such are the facts, and I so informed Mr. Clarke at the time.

He now claims compensation of the Government for his services during the period he had charge of the legation and its property, and upon every principle of justice and equity I think him entitled to it; and, as I have been instrumental in his employment for the public service, I feel an interest that the Department should bring his claims to the favorable notice of Congress and recommend the necessary compensation.

Mr. Clarke, obliged soon after to return to Europe, in May, 1859, thus left his petition in the hands of Mr. Mason, not doubting that, for services rendered during a period of over two years, and for outlays much greater in an official position than he would have incurred as a private person, he would be promptly remunerated and reimbursed. But Mr. Mason, occupied, possibly, with graver matters, neglected the interests thus intrusted to him, so that Mr. Clarke, when he again returned to the United States, was forced to offer a second petition to Congress, presented a year ago.

A note was on this occasion addressed to the Secretary of State, requesting the facts, to which Mr. Seward replied as follows:

From a reference to the files of the Department, it appears that the statements in the memorial, which is herewith returned, are entirely correct, with the exception of a slight inaccuracy, which, in justice to the memorialist, it is deemed proper to mention, namely, that his period of service was extended to the 27th instead of the 3d of September, 1858, the former being the date at which the successor of Mr. Seibels assumed the duties of the legation at Brussels, and on which Mr. Clarke relinquished them. The Department has heretofore borne testimony to the faithful and creditable manner in which the duties assigned him by Mr. Seibels were performed by Mr. Clarke during the entire period of his service, and his claim for compensation, as now presented, would appear to be equitable and entitled to the consideration of Congress.

Thus, it appears, that Mr. Clarke, through the appointment of the minister resident, and by the sanction of the Secretary of State, remained solely in charge of the United States legation in Belgium from the 18th September, 1856, the day on which the seals were transferred to his custody, to the 27th September, 1858, the date of his substitution by another minister, making in all a period of two years and nine days. During this period he not only gave his time and services, corresponded with the Department, fulfilled the instructions received from it, but continued to hire the residence which had, during two missions, been occupied by the legation, and defrayed from his private means the many expenses incident to representation and to diplomatic life; so that to grant the claim he now offers is perhaps little more than to reimburse him for his extraordinary outlays, considering the time which has elapsed, and the interest which has accrued on the sums thus expended in the service of the Government.

It should not be overlooked that Mr. Clarke demands no compensation for the nine months during which the minister continued to hold his commission and to receive his salary; that he requests Congress to remunerate him only from the date of Mr. Siebels's resignation to that of the arrival in Belgium of a new minister, a lapse of fifteen months. And should Congress refuse to Mr. Clarke the compensation and reimbursement for which he prays, it would be to place the Government in the position of allowing the services and the expenses of the legation in Belgium to be incurred, for the period in question, by a private citizen.

The pay of a *chargé d'affaires*, fixed by act of Congress, is at the rate of \$5,000 a year. The following letter from the Secretary of State furnishes the estimates for the amount due Mr. Clarke:

DEPARTMENT OF STATE,  
*Washington, February 28, 1865.*

SIR: Pursuant to your oral request, I have the honor to inclose a precise statement of the sum necessary to be appropriated for payment of the claim of Mr. James G. Clarke, for services as acting *chargé d'affaires* at Brussels.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. CHARLES SUMNER,  
*Chairman of the Committee on Foreign Relations, Senate.*

June 11 to June 30, 1857 .....	\$274.72
July 1, 1857, to June 30, 1858 .....	5,000.00
July 1, 1858, to September 27, 1858 .....	1,209.24
Total .....	6,483.96

The committee report a bill for the relief of Mr. Clarke, founded on these estimates from the Department of State.

#### FORTIETH CONGRESS, SECOND SESSION.

July 21, 1868.

[Senate Report No. 182.]

Mr. Sumner, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the memorial of James C. Pickett, with the accompanying papers, have had the same under consideration, and ask leave to submit the following report:

The facts in this case, as stated by Mr. Pickett in his memorial, are

briefly these: In 1838 he was appointed chargé d'affaires to the Peru-Bolivian confederation, with a mission to Ecuador. With the latter he negotiated a treaty, and then proceeded to his post at Lima, where he arrived in August, 1839, and continued in the discharge of the duties of his office till May, 1845. He drew, for his salary and the contingent expenses of the legation, bills of exchange on Baring Brothers, in London; and on these bills he alleges that he sustained a loss through the difference of exchange, a loss which he did not charge in the settlement of his accounts, and for which he was allowed nothing. He now petitions that his accounts may be reopened and he may be paid for this alleged loss.

On examination it appears that it has been the practice of the Government since 1846 to allow for losses arising from the difference of exchange, and this practice is founded upon an opinion of the Attorney-General, Mr. Mason, dated July 20, 1846, in the case of Henry A. Wise, our minister to Rio.

Mr. Pickett's accounts were adjusted before this practice seems to have begun, and no claim was made by him at that time. He gives as a reason for this that he was "not aware that any precedent to restore such losses had been established." He now relies on the precedent established in the case of his successor (John Randolph Clay), whose accounts were opened and adjusted in order that he might be allowed for a similar loss, in conformity with a joint resolution bearing date the 20th of February, 1861.

Mr. Clay was appointed in 1847, and continued to discharge the duties of minister to Peru till the date of the resolution mentioned above. When he presented his claim the Department declined to consider it on the ground that his case fell within a long-established rule, "that settlements of accounts of individuals against the United States are not to be opened for readjustment at the instance of such individuals unless new and distinct facts are shown, by legal and sufficient evidence, to justify such opening and settlement." The committee to whom his case was referred considered, however, that the neglect of Mr. Clay to charge the losses claimed ought not to be construed as an abandonment of the claim, and that he could not be fairly charged with knowledge of the fact that his claim would be regarded by the Department as coming within the rule above laid down.

In the present case the committee do not think that any sound reason exists for a departure from this rule. Mr. Pickett was satisfied with the settlement of his accounts when it was made, and was not aware of any ground for a claim on his part. Some parts of his claim are more than thirty years old. The matter has been settled for almost twenty-five years, and whatever may have been the original merits of Mr. Pickett's claim, the committee do not think that they are such as to warrant the opening of accounts which have been settled for a quarter of a century. To do so now would be to establish a precedent of which every diplomatic agent of the Government since its foundation, or his legal representatives, might justly claim to take advantage. Under these circumstances and to avoid establishing this precedent, the committee recommend that the petition be rejected, and append to their report a letter from Mr. Tayler, the Comptroller of the Treasury, which relates to the case:

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE,  
July 11, 1868.

SIR: I return herewith the letter and papers from the Senate Committee on Foreign Affairs relative to the claim of J. C. Pickett for alleged loss in the sale of his

drafts drawn by him for salary while acting as chargé d'affaires and minister to some of the South American republics some twenty years since.

The committee ask your opinion as to the merits of Mr. Pickett's application, and what would be the effect of opening his accounts as a precedent for other similar cases.

Mr. Pickett's accounts have been long since adjusted, but I do not find that he claimed to have sustained any loss in the sale of his drafts, and none was allowed or paid him; from which the presumption is that none was sustained.

Whether there is or is not merit in the claim can not be stated in the absence of evidence upon the fact of loss or of no loss.

The opening of Mr. Pickett's accounts will, of course, be a precedent for similar action in other like cases, if any exist. Whether they do exist I am unable to state; but their existence is quite probable.

I am, very respectfully, your obedient servant,

R. W. TAYLER, *Comptroller.*

Hon. H. McCULLOCH,  
*Secretary of the Treasury.*

#### FORTIETH CONGRESS, THIRD SESSION.

March 1, 1869.

[Senate Report No. 270.]

Mr. Sumner, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred "the petition of Jonathan Elliot, late commercial agent of the United States at San Domingo and Porto Plata, praying compensation for services rendered and reimbursements for money expended in negotiating a treaty with the Dominican Republic in 1856," have had the same under consideration and beg leave to submit the following report:

The facts in this case appear to be these: The petitioner was appointed commercial agent of the United States for San Domingo and Porto Plata on the 5th of November, 1847, and continued to hold this office till about the 1st of January, 1863. During this time, on the 5th of October, 1855, he was appointed to negotiate a special treaty with the Dominican Republic, and was employed in this business about two months. In carrying on this negotiation he employed two secretaries, one for himself and one for the commissioners on the part of the Dominican Republic, to act as translators, both of whom he paid out of his own purse to the amount of \$616 in gold. He asks to be repaid this sum, and also prays compensation for his services. It appears from the records of the State Department that he received \$500 for his expenses, and Mr. Marcy, the Secretary of State at the time, refused to pay the salaries of the secretaries, on the ground that he had not been authorized to employ such assistance, and because the compensation paid him was understood to cover all expenses.

Mr. Seward says that his "impression is that the claim has no just foundation." It would seem, then, that he had received \$500 as compensation for two months' services; that this was intended to cover all expenses, although the expenses alone appear to have been greater than the amount received. At this late day, after the considerable time which has elapsed, and in view of the refusal of the State Department to recognize the validity of the claim when all the circumstances were fresh, and the impression of the present Secretary of State that "the claim has no just foundation," the committee do not think it ought to be recognized now. Accordingly they report against it.

## FORTY-FIRST CONGRESS, SECOND SESSION.

January 31, 1870.

[Senate Report No. 17.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom is referred the petition, with accompanying papers, of John Somers Smith, late commercial agent at the city of St. Domingo, beg leave to report:

From the papers before the committee, it appears that the petitioner, John Somers Smith, in 1867, A. D., while commercial agent of the United States at the city of St. Domingo, was employed in a diplomatic capacity, and that he negotiated a general convention of amity, commerce, and navigation, and for the surrendering fugitive criminals between the United States of America and the Dominican Republic, which convention was signed at the city of St. Domingo February 8, 1867, after advice and consent of the Senate, ratified by the President of the United States July 31, 1867, and after exchange of ratifications at St. Domingo October 5, 1867, proclaimed by the President of the United States October 24, 1867. The petitioner also sets forth other services rendered under power from the President of the United States to purchase or obtain a lease of the peninsula and bay of Samana, under which he maintained a diplomatic correspondence with the Secretary of State, consisting of 32 confidential letters, irrespective of his regular correspondence, all of which are on file in the Department of State.

The petitioner also sets forth expenses on account of political refugees at the consulate.

The question of additional compensation to Mr. Smith, beyond his pay as commercial agent, has been referred to the Department of State by the committee, in order to have some competent opinion with regard to the reasonableness of his claim. By a letter dated December 21, 1868, Mr. Seward thus expresses himself:

There is believed to have been no other instance where business of such importance has been intrusted to and successfully accomplished by a mere commercial agent. We were moved to employ Mr. Smith for the purpose referred to from a knowledge of his capacity for and experience in business, and of his familiarity with the Spanish language, shown during many years when he held an important consulate in Spain. Perhaps a sufficient precedent for such an appropriation may be found in the act of Congress approved March 3, 1855 (Stats., Vol. X, p. 659), by which \$20,000 were awarded to Commodore M. C. Perry for concluding the treaty with Japan.

The same question has been submitted again to the Secretary of State, the successor of Mr. Seward, who was asked by the committee to express his opinion on the value of these services, and the proper allowance, if any, to be made. Mr. Fish, in reply, under date of January 18, 1870, says:

It can not be doubted that Mr. Smith's services were valuable, and that he has an equitable claim to compensation for them.

In another letter of January 26, Mr. Fish says:

That the sum of \$3,750, deducting therefrom \$1,500, a year's salary as commercial agent, would be an adequate compensation.

The committee have accepted the estimate of Mr. Fish, which appears to be sufficiently moderate, and report a bill accordingly.

April 26, 1870.

[Senate Report No. 124.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was recommitted Senate bill No. 692, for the relief of J. Ross Browne, late minister of the United States to China, have had the same under consideration and beg leave to report:

J. Ross Browne, late minister of the United States to China, in petition claims compensation for the period between April 11 and August 4, 1868, both inclusive, during which time he held his commission and performed actual services for the Government, and a further sum for certain extra expenses incurred by him in the discharge of his duties as minister.

On reference to the Department of State a reply, under date of 12th of March, 1870, was received, recommending allowance of compensation to Mr. Browne at the rate of his salary for the period from the 11th of April, 1868, to the 3d of June, 1868, both inclusive, being \$1,775.30, and for the following items presented in his petition, viz:

Office rent, nine months, at \$50 per month .....	\$450
Clerk hire for same period, at \$100 per month .....	900
Gate keeper for same period, \$5 per month .....	45
Keeping express horse for same period, \$5 per month .....	45
Expenses incurred in visiting treaty ports .....	500

Total..... 1,940

An item of \$1,000 for "cost of passage to and from Pekin in excess of expense incurred by ministers to any other power" was disallowed by the committee.

In accordance with the recommendation of the Department of State a bill was reported providing for the payment to Mr. Browne of the sum of \$1,775.30, salary as above, and the further sum of \$1,940 for the other items specified being in all the amount of \$3,715.30.

The Department recognized Mr. Browne's title to salary from June 4 to August 4, 1868, both inclusive, under the existing law. The Comptroller of the Treasury, in a communication to the Secretary of State, under date of April 23, 1870, stated that he did not think himself authorized, under the existing law, to allow for this period, but adding that he thought the allowance equitable.

The Department of State, under date of April 23, 1870, in a communication to the committee, has recommended that, in addition to the provision for Mr. Browne suggested by the Department in its letter of April 12, 1870, allowance be made for transit expenses at the rate of his salary from June 4, 1868, to August 4, 1868, both inclusive, being the sum of \$1,998.81; thus covering the period for which, according to the Comptroller, an allowance would be equitable.

The committee accordingly report an amendment to the above-mentioned bill, allowing Mr. Browne \$3,774.11, as salary from April 11 to August 4, 1868, and \$1,940, for the extra expenses set forth above, with the addition of 10 per cent, or \$194, for exchange.

May 19, 1870.

[Senate Report No. 173.]

Mr. Sumner submitted the following report:

The Committee on Foreign Relations, to whom was referred the petition of Charles Town Smith, praying compensation for services ren-

dered as attaché of the United States legation at Madrid, have had the same under consideration and beg leave to report:

Mr. C. T. Smith represents in his petition that in March, 1855, he was appointed by Mr. Marey attaché to the legation of the United States at Madrid, at the recommendation of Mr. Perry, then acting as chargé d'affaires, to assist in the settlement of the *Black Warrior* case, at the salary of \$1 a day; that afterwards he was appointed by Hon. Augustus O. Dodge, minister of the United States at Madrid, acting secretary of legation, and performed the duties of this post until the arrival of Mr. Buckingham Smith as secretary, and that for all these services he drew on Washington, and was duly paid. After the arrival of the secretary the petitioner continued at the legation as attaché, and he now asks an allowance of \$210 for his services there. On application from the committee to the Secretary of State, it appears that there is no record in the Department of any authority for this appointment, nor is there anything to show service. It should be added that no such officer as attaché is contemplated or provided for by the laws of the United States. Under these circumstances, and considering also the long period that has elapsed since the alleged service, it is not thought that the case deserves consideration. The committee recommend that the petition be indefinitely postponed.

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June 18, 1870.

[Senate Report No. 216.]

**Mr. Sumner made the following report:**

The Committee on Foreign Relations, to whom was referred the petition of Marcus Otterbourg, have had the same under consideration, and beg leave to report as follows:

Mr. Marcus Otterbourg was appointed consul of the United States at the City of Mexico in August, 1861. In July, 1865, he tendered his resignation, assigning as a reason that his salary, by law fixed at \$1,000 per annum, was inadequate to permit him to represent the country creditably. His resignation was accepted by Mr. Hunter, Acting Secretary of State, with the request that he would continue to hold the office until the arrival of a successor at his post of duty.

Of subsequent facts of importance in this case, Mr. Seward, then Secretary of State, made the following official statement, dated February 23, 1869:

Mr. Otterbourg returned to the United States. In March, 1866, he went back to Mexico as consul and to take charge of the archives of the legation. Mr. William H. Corwin, acting chargé d'affaires, having been recalled. He reported himself as having arrived at Mexico on the 8th day of April, 1866, and as being occupied in verifying the inventory of archives and other property of the legation, which was finally completed, and he put in charge thereof by Mr. Corwin, in pursuance of the instructions of the State Department, on the 20th day of the same month. He was thenceforward recognized as a consular officer, performing and authorized to perform diplomatic functions so far as such were necessary and practicable in the exceptional condition of Mexico, and of the relations of this Government to the usurping government of Prince Maximilian, in actual possession of the capital, and to the rightful government of President Juarez, which was generally remote therefrom, and migratory with the vicissitudes of war.

Mr. Otterbourg kept the Department informed of the political situation in Mexico. His dispatches, not concerning his commercial functions as consul, but those of a political agent, were classified and preserved among the diplomatic archives. In October, 1866, Mr. Otterbourg again returned to Washington, with the approval of the Department, and was directed to make a confidential report on the situation in Mexico at that time. He was furnished with a copy of the instructions to Lewis D. Campbell, who had been appointed minister to Mexico, with whom, on his return, he was directed to communicate.

He proceeded to Mexico and made a report, which he delivered to our minister on his arrival at Vera Cruz. During the whole period, from April, 1866, to June 21, 1867, during which Mr. Otterbourg was consul and in charge of the legation as aforesaid, there was not in that country any other officer of the United States authorized to perform diplomatic functions therein, except or otherwise than that Lewis D. Campbell, a duly commissioned minister, was for a day or two upon its coast or in the harbor of Vera Cruz, whence he returned without proceeding to the interior or putting himself in communication with the Government of Mexico, except when, in April, 1867, he addressed from New Orleans a letter to the Mexican secretary for foreign affairs, requesting humane treatment for Maximilian in case of his capture.

In response to interrogatories for the United States: The United States had at no time a representative accredited to the Government of Prince Maximilian. We had no other minister appointed to the Government of Mexico during the time for which Mr. Otterbourg claims compensation, and who accepted or made any attempt to proceed upon his mission, except Lewis D. Campbell, of whom I have before spoken, and no one who during that period presented his letters of credence. The office for which Mr. Otterbourg claims salary was not occupied by any other person. During the whole period of the occupation of Mexico by Prince Maximilian Congress made the usual annual appropriation for a minister to Mexico, with no other variation than that, in the act making appropriations for the consular and diplomatic service for the year ending June 30, 1866, the words "Republic of Mexico" were substituted for Mexico, the same language being repeated in subsequent acts. This Government never recognized the Government of Maximilian, in the sense of acknowledging or treating with it. We knew it only as an awkward political fact, or rather political pretension, supported by force and foreign intervention.

WILLIAM H. SEWARD.

On June 21, 1867, Mr. Otterbourg was nominated by the President minister plenipotentiary and envoy extraordinary of the United States to the Republic of Mexico. The Senate adjourned on July 21, 1867, without having confirmed the nomination of Mr. Otterbourg; but he continued to discharge the duties of minister plenipotentiary until August 28, 1867, when he received the notification of the lapse of his commission in consequence of the adjournment of the Senate as above. Mr. Otterbourg thereupon returned to the United States and reported at the State Department November 1, 1867, leaving the consulate in the charge of a competent person.

Having presented his account for his services, it was certified by the Fifth Auditor as for consul in charge of legation from April 8, 1866, to June 20, 1867, at the rate of \$2,800 per annum; and for minister from June 21 to September 30, 1867, at the rate of \$12,000 per annum. The First Comptroller, however, deducted all allowance to him as consul in charge of legation and as minister, but admitted and certified the salary of consul.

The case was taken to the Court of Claims, where judgment was rendered for \$85.80 for exercising diplomatic functions from the 19th of August to the 9th of September, 1867, in addition to a further sum due for his services as consul. The court refused to allow salary as minister on the technical objection that Mr. Otterbourg took his oath of office before the consul-general of Switzerland, whose authority for that purpose does not appear. There was, however, no one else before whom he could have taken the oath unless he had returned to Washington for that purpose; and furthermore, the Department of State regarded him as minister and promised him compensation as such.

In accordance with the above statements the committee report a bill giving compensation to Mr. Otterbourg as consul performing diplomatic functions from April 8, 1866, until June 20, 1867, both inclusive; and as minister from June 21 to September 30, 1867, deducting what he has received as consul, and the sum of \$85.80, awarded him by the Court of Claims for exercising diplomatic functions from the 19th August to the 9th September, 1867.

[See p. 722.]

July 6, 1870.

[Senate Report No. 241.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred bill H. R. 2094, being "An act for the relief of Mrs. M. S. Morse, administratrix and widow of Isaac E. Morse, deceased," have had the same under consideration and ask leave to report:

Hon. Isaac E. Morse, of Louisiana, was designated by Mr. Marcy, when Secretary of State, a special commissioner to New Granada, and entered upon his duties November 7, 1856. He appears to have returned to the United States April 28, 1857, and to have made a final settlement of his accounts June 20, 1857, when the Department of State allowed him compensation at the rate of salary of a minister resident, and he was paid out of its contingent fund \$3,572.84. On examination of the executive minutes of the Senate it appears that Mr. Morse was never appointed and confirmed by the Senate. He was only an agent of the Department of State, whose compensation, in the absence of agreement, depended upon usage and the value of the services.

In 1860 the case came before the Senate on the petition of Mr. Morse, when Mr. Slidell, of the Committee on Foreign Relations, made a report, allowing him additional compensation at the rate of \$15 a day. This report was never acted on.

Meanwhile Mr. Morse died. His widow, as administratrix, petitioned Congress for the additional compensation. Her petition was referred to the Committee on Foreign Relations June 30, 1868, and this committee, after careful consideration, reported upon it adversely January 26, 1869. While the case was before the committee it was referred to the Department of State, whose judgment was expressed in the following letter:

DEPARTMENT OF STATE,

*Washington, July 6, 1868.*

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, with the petition of Mrs. Margaretta S. Morse and accompanying papers, relative to a claim which she makes to an appropriation by Congress of \$4,500 for compensation for the services of her husband, Isaac E. Morse, as United States commissioner to New Granada. In reply, I have the honor to inform you that, since the final adjustment of the accounts of Mr. Morse for his employment in the character referred to, a similar claim has repeatedly been presented to this Department, but has not been allowed, because, it may be presumed, every allowance had already been made which usage or equity could sanction. Mr. Morse was associated with the late James B. Bowlin as joint commissioner to the Government of New Granada for the purpose, in part, of negotiating a convention with that Government upon the subject of claims of citizens of the United States. There is nothing in his instructions which specifies his compensation. As Mr. Bowlin, however, was also at the time the United States minister resident at Bogota, it could scarcely have been contemplated that Mr. Morse's compensation was to exceed his, which was fixed by law at \$7,500 a year. Indeed, Mr. Morse's account was adjusted upon this basis, for it appears from the records of this Department that he received for his compensation and expenses to New Granada \$3,572.84 from November, 1856, to April, 1857, at \$7,500 a year. You are aware that, pursuant to the law as it then existed and now exists, no diplomatic agent is allowed an outfit or any other traveling expenses than the amount of his salary during the time actually and necessarily occupied in proceeding to and returning from his post. The allowance to Mr. Morse was made accordingly, and, as is presumed, was ample under the circumstances.

The papers which accompanied your letter are herewith returned.

I have the honor to be, your obedient servant,

WILLIAM H. SEWARD.

Hon. CHARLES SUMNER,

*Chairman Committee on Foreign Relations, Senate.*

The committee see no reason to reconsider the report of January 26, 1869. The lapse of time and the judgment of the Department of State are impediments; nor can they doubt, in view of all the circumstances, that Mr. Morse received, at the settlement of his accounts, a reasonable compensation. Though only an agent of the State Department, he received the compensation of a minister resident; and this compensation was continued for nearly two months after his return to the country.

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July 14, 1870.

[Senate Report No. 261.]

**Mr. Sumner made the following report:**

The Committee on Foreign Relations, to whom was referred the petition of Nicholas P. Trist, have had the same under consideration and now report:

The services of Mr. Trist constitute an interesting chapter in the history of our country. As negotiator of the treaty of Guadalupe Hidalgo, he exercised a decisive influence in terminating the war with Mexico, by which we were secured in the blessings of peace and in the possession also of an undisputed title to Texas, and an addition to the national domain equal in area to the present territory of Mexico, and including in its expanse the great and prosperous State of California.

Mr. Trist, while chief clerk of the State Department, and in confidential relations with Mr. Buchanan, the Secretary of State, was selected as "commissioner to negotiate and conclude a settlement of existing differences and a lasting treaty of peace" with Mexico. On the 16th April, 1847, he left Washington and proceeded to the Headquarters of the Army of the United States in Mexico, where for several months he labored anxiously to accomplish the object of his important mission. Not until November, 1847, was the first great point reached. This was the appointment of a commission on the part of the Mexican Government authorized to negotiate.

Meanwhile at Washington there was a spirit hostile to negotiation; Mexico was not sufficiently humiliated. In the midst of his negotiation, when a treaty of peace was almost within his grasp, on the 16th November, 1847, Mr. Trist suddenly received a letter of recall, with the order to return home by the first safe opportunity. After careful deliberation, and with the sure conviction that if his efforts were thus abruptly terminated the war would be much prolonged, while the difficulties of obtaining another Mexican commission would be increased, he concluded to proceed, and do what he could for the sake of peace. The Mexicans to whom he communicated the actual condition of affairs united with him, and a treaty was signed on the 2d February, 1848, at Guadalupe Hidalgo. Mr. Trist remained in Mexico until the 8th of April, 1848, in order to protect the interests of the United States, and would have remained longer had not an order for his arrest, sent from Washington to our military authorities, compelled him to leave.

It is understood that the President, on the arrival of the treaty, proposed to suppress it; but, unwilling to encounter public opinion, which was favorable to peace, he communicated it to the Senate,

when, with certain amendments, it was ratified by a vote of 38 yeas to 14 nays. And thus the war with Mexico was closed.

The commissioner who had taken such great responsibility reached Washington on his return in June, 1848, only to encounter the enmity of the Administration then in power. His mission had been crowned with success, but he was disgraced. By the order of President Polk his pay was stopped on November 16, 1847, so that the service, as peacemaker, rendered after that date was left without compensation as without honor. Mr. Trist was proud and sensitive. He determined to make no application at that time for the compensation he had earned, and to await the spontaneous offer of it, unless compelled by actual want. In pursuance of this determination, for more than twenty years, he has worked for his daily bread, most of the time as the employee of a railroad company; but now having arrived at the age of three score and ten, and, by reason of years and infirmity, being compelled to resign his situation, he naturally turns to this unsettled account, and asks for his due.

The committee see no reason why he should not be paid according to the nature of his services, at the customary rates of the time. So far as he has been paid it was only as a *chargé d'affaires*, and out of the secret-service fund at the disposal of the President. The mission was secret, but he was entitled "commissioner," which was the title of our representatives at the treaty of Ghent. By the terms of his commission he was invested "with full and all manner of power and authority for and in the name of the United States, to meet and confer with any person or persons having like authority, and with him, or them, to negotiate and conclude a settlement of existing differences, and a lasting treaty of peace, friendship, and limits between the United States and the Mexican Nation, whereby shall be definitely settled all claims, etc., and likewise the limits and boundaries and all matters and subjects therewith connected which may be interesting to the two nations." With these full powers he proceeded and acted. Shortly before him, Mr. Slidell, of Louisiana, had proceeded to Mexico with the title of "commissioner," for which he was paid at the rate of what was called a "full mission," being for an unsuccessful service of four months and nineteen days, \$15,698.28. The ratification of the treaty by the Senate was followed by another commission, composed of Mr. Sevier, recently chairman of the Senate Committee on Foreign Relations, and Mr. Clifford, the Attorney-General, each being paid at the rate of a "full mission," and the total cost of the commission being \$28,728.67.

If these other commissioners received such considerable sums for a service inferior to that of Mr. Trist, it is difficult to see why he should not be placed at least on an equal footing with them. His title is attested by Mr. Benton in a letter written at a later day:

WASHINGTON, *January 18, 1856.*

DEAR SIR: I am at that point of my history which touches your mission to Mexico, and as I propose rather to tell how things were done than what was done. I am extremely anxious to talk with you, both as to the beginning and ending of that war, as you know more about it than any living man. Can you come on here? Please write me and let me know whether you can come.

You ought to put forward your claim to Congress for full pay and outfit for the Mexican treaty. There were many in the Senate ready to stand by you then, and I believe you can get compensation yet.

Hoping to hear from you soon, respectfully,

THOMAS H. BENTON.

NICHOLAS P. TRIST, Esq.,  
*Philadelphia.*

A recent letter from Hon. Reverdy Johnson, a member of the Senate at the ratification of the treaty, attests the merits of Mr. Trist:

BALTIMORE, May 21, 1870.

MY DEAR SIR: I understand that a petition is now before the Senate, of Mr. Nicholas P. Trist, asking to be allowed the full pay of a minister plenipotentiary during the time he was in the public service in Mexico, and negotiating the treaty which terminated our war of 1846 with that country. Being a member of the Senate when the treaty was submitted for ratification, I distinctly recollect that the Senators placed a high estimate upon the value of Mr. Trist's services, and thought that a salary as minister should be allowed him, and I have little doubt that this would have been done had he requested it. In this I fully concur with Colonel Benton, in his letter of the 18th June, 1856, which forms a part of the memorial.

Mr. T., at that time, however, failed to make the demand, but he is now poor and too old to earn a livelihood, and it would seem to be not only generous, but just, that his services should be rewarded.

It is difficult to exaggerate how much they benefited the country. The treaty, as you know, not only ended the most expensive war upon honorable terms, but secured to us territory of inestimable value.

Hoping that the negotiator may now be compensated,

I remain, with regard, your obedient servant,

REVERDY JOHNSON.

Hon. CHAS. SUMNER,

*United States Senator, Washington, D. C.*

The committee are satisfied that Mr. Trist should receive compensation for the entire period of his service, and not merely for that part terminating November 16, 1847, when the letter of recall reached him, such entire period extending from April 15, 1847, to April 8, 1848; that such compensation should be at the rate then established for what was called a "full mission," being outfit, salary, and return allowance, and in addition thereto whatever was expended as "contingent expenses," being \$797.50, deducting therefrom the money actually received, being \$8,276.65. Interest should be allowed on the "contingent expenses" actually incurred from April 8, 1848; but on the compensation now due only from the presentation of his petition, March 7, 1870.

In justice to a faithful public servant and for the sake of its historic interest, the statement of Mr. Trist, filed with the committee, is annexed.

#### MISSION OF MR. NICHOLAS P. TRIST TO MEXICO, INSTITUTED APRIL 15, 1847.

##### FACTS OF THE CASE.

##### A.—*The mission instituted; its object and plan of proceedings; the person selected for it.*

In April, 1847, Congress being then not in session, a determination was taken by the President of the United States, in the exercise of his Executive discretion, to institute a special mission to Mexico: this mission having for its single and sole object the effecting of a treaty of peace; in other words, the extrication of our country from the war in which she had become involved by the annexation of Texas.

For this service the selection fell upon Mr. Nicholas P. Trist, then holding the post in the Department of State next to that of its head. It was undertaken by him single handed, unaccompanied even by a secretary.

The plan was that he should at once repair to the headquarters of our army in Mexico, then under command of Gen. Winfield Scott (or at his option, upon reaching the port of Vera Cruz, remain on board our fleet there), and that the Mexican Government should be informed of the presence there of "the officer of our Department of Foreign Affairs, next in rank to its chief," clothed with full powers to

conclude a treaty of peace, should that Government deem proper to enter upon a negotiation with this view.

The letter of instructions from the Department of State, under which he so proceeded to Mexico, is contained in the Senate document, Thirtieth Congress, first session, Executive No. 52. It begins thus (p. 81 of document just named):

[Mr. Buchanan to Mr. Trist.]

“DEPARTMENT OF STATE,  
“Washington, April 15, 1847.

“SIR: Since the glorious victory of Buena Vista, and the capture of Vera Cruz and the castle of San Juan d’Ulloa by the American arms, it is deemed probable that the Mexican Government may be willing to conclude a treaty of peace with the United States. Without any certain information, however, as to its disposition, the President would not feel justified in appointing public commissioners for this purpose, and inviting it to do the same. After so many overtures, rejected by Mexico, this course might not only subject the United States to the indignity of another refusal, but might in the end prove prejudicial to the cause of peace. The Mexican Government might thus be encouraged in the mistaken opinion which it probably already entertains, respecting the motives which have actuated the President in his repeated efforts to terminate the war.

“He deems it proper, notwithstanding, to send to the headquarters of the army a confidential agent, fully acquainted with the views of this Government and clothed with full powers to conclude a treaty of peace with the Mexican Government should it be so inclined. In this manner he will be enabled to take advantage, at the propitious moment, of any favorable circumstances which might dispose that Government to peace.

“The President, therefore, having full confidence in your ability, patriotism, and integrity, has selected you as a commissioner to the United Mexican States, to discharge the duties of this important mission.”

B.—*Grade of the mission: First, in point of official character; second, in point of pay.*

First. In point of official character it was of the highest grade possible. The full powers with which the commissioner was clothed were of the amplest kind that any government can intrust to a diplomatic functionary. His “commission,” under the great seal of the United States, signed by the President and countersigned by the Secretary of State, runs thus: “Commissioner of the United States of America, with authority to meet,” etc., “and to negotiate and conclude a settlement of subsisting differences and a lasting treaty of peace,” etc. His “full power,” under the same great seal, and bearing the same signatures, runs thus:

“Have invested him with full and all manner of power and authority, for and in the name of the United States, to meet and confer with any person or persons having like authority. \* \* \* and with him or them to negotiate and conclude a settlement of subsisting differences and a lasting treaty of peace, friendship, and limits between the United States and the Mexican nation: whereby shall be definitively settled all claims \* \* \* and likewise the limits and boundaries between the United States of America and the United Mexican States, and all matters and subjects therewith connected which may be interesting to the two nations.”

For his action in the execution of these ample powers, a latitude of discretion is conferred in his letter of instructions such as is but seldom, if ever, exceeded.

Considered in this point of view, the powers conferred and the importance and magnitude of the object for which it was instituted, the mission was of as high a grade as any mission can be, whatever be the title given to the person employed in its execution. And it is to be observed that the title in this instance, “commissioner,” was the same with that borne by those three “United States commissioners at Ghent,” Henry Clay, John Quincy Adams, and Jonathan Russell, by whom was negotiated and concluded our last (last thus far, and ’tis to be fervently hoped, last forever) treaty of peace with our mother country.

Second. *Pay attached to the mission.*—In this respect its grade was fixed at the other end of the scale: the pay of this special mission was made the same as that of a *chargé d’affaires*, the lowest grade of the then regular diplomatic stations.

In connection with this fact it is necessary to advert to the peculiarities of the case in these respects: First. There was no appropriation for this special mission, and Congress was not in session to make one. Moreover, it was deemed important that it should be a secret one, and so remain as long as possible. Hence the necessity that its cost should be defrayed out of the fund (familiarily called “secret

service") which is provided by Congress as a resource for emergencies arising in our foreign intercourse; which fund being intrusted by law to the President for expenditure at his sole and untrammelled discretion, there necessarily attaches to every such expenditure a peculiar sense of personal responsibility, restraining from all approach to lavishness in this irresponsible disposal of public money. Secondly. This mission was a mere experiment which might prove abortive, like other measures previously taken by the President in the hope of thereby obtaining of the Mexican Government a negotiation for peace, among which "repeated efforts on the part of the President to terminate the war," as they are called in the Secretary of State's instructions to Mr. Trist, had been the public mission of Mr. John Slidell, of Louisiana, for which an appropriation had been obtained from Congress, and which had proved a fruitless waste of public money to the extent of nearly \$16,000.<sup>1</sup> Thirdly. This mere experiment was expected to be a very short one; a result, one way or the other, would very soon be reached; and for a term of service so very brief (not over three months at the outside) it would be extravagant, upon mere Executive authority alone, to incur an expenditure beyond the sum which would be made up of the outfit and salary of a chargé.

*C.—Result of the mission; steps by which this result was reached.*

The mission had for its result the treaty of Guadalupe Hidalgo, signed on the 2d of February, 1848, and subsequently ratified by both Governments. The steps by which this result was reached were briefly as follows:

Mr. Trist left Washington April 16, 1847; embarked at New Orleans for Vera Cruz, where he landed May 6, and immediately proceeded to headquarters of our army, then at the city of Jalapa. Thenceforward he continued with it until April 8, 1848, when he left the City of Mexico, on his return to Washington, which he reached about the middle of June.

At the time of his arrival at Vera Cruz the only federal authority existing in the Mexican Republic was lodged in "the Sovereign Constituent Congress," then sitting in the City of Mexico—a body regularly elected for the twofold purpose of, first, reestablishing (with amendments) the constitution of 1824, that had been subverted by military violence and usurpation; second, disposing of all questions connected with the war. By this body a provisional executive had been established, at the head of which was Santa Anna as provisional President of the Republic.

In August, 1847, the American army, by a rapid series of brilliant achievements, having carried and occupied all the strong positions constituting the outer line of defenses of the City of Mexico, an offer was made by its commander, General Scott, to the Mexican Government of an armistice, with a view to negotiations for peace, which offer being immediately accepted, the terms of the armistice were forthwith settled by commissioners appointed on both sides, those selected by General Scott being Generals J. A. Quitman, Persifer F. Smith, and Franklin Pierce.

The negotiation for peace was forthwith entered upon by Mr. Trist and four plenipotentiaries appointed by Santa Anna. At the head of these stood General Herrera, the highest name, by universal acknowledgment, throughout that Republic for the purity of patriotism and general probity of character for which he was noted, and which, on several occasions, had caused his elevation to the Presidency of the Republic by constitutional election. Next to Herrera among the Mexican plenipotentiaries was his bosom friend, Couto, the most eminent lawyer of the Republic, and no less noted than himself for proverbial integrity. Between all four of these men and Santa Anna the utmost repulsion was known to exist that could arise from extreme contrariety of character in every possible respect, private

<sup>1</sup> The exact figures as they stand in the public accounts (Fifth Auditor) are:

*Compensation paid to John Slidell as minister to Mexico.*

Outfit .....	\$9,000.00
Salary, at \$9,000 per annum, for 4 months and 19 days .....	3,471.74
Return allowance .....	2,250.00
<b>Total paid him as compensation .....</b>	<b>14,721.74</b>
Add contingent expenses reimbursed to him .....	204.35
Add salary of secretary for 4 months and 19 days, at \$2,000 per annum .....	772.19
<b>Total cost of that mission .....</b>	<b>15,698.28</b>

as well as public. Upon being appointed by him they had begged to be excused, and it was only upon his insisting and appealing to them, in the name of their country, that they had consented to act.

The negotiation began August 27, 1847, and ended on the 6th of September, with the announcement to the American plenipotentiary of the rejection of the terms proposed by him and the submission of a counter project from Santa Anna. This caused the immediate cessation of the armistice and the resumption of hostilities on the day following. It afterwards became public that the conferences between the plenipotentiaries had borne for their fruit a recommendation from those on the Mexican side to Santa Anna and his cabinet that a treaty should be conducted upon the terms proposed by the Government of the United States.

The resumption of hostilities on the 7th of September was speedily followed by the capture of the City of Mexico and the dissolution of the Mexican Government. In his dispatch of September 27, 1847, Mr. Trist, speaking of the capture of the Mexican capital, says: "From which event dates the total dissolution of the Mexican Government. There has not been since that moment any recognized authority in existence with whom I could communicate."

For the time being, therefore, negotiation was simply impossible. The only thing that Mr. Trist could do was to further, by such means as might be in his power, the formation of a government with which to treat.

It so happened that means toward this end were in his power, and they were diligently used by him. They consisted in the sentiments of personal regard and confidence in him with which the Mexican commissioners in the recent abortive negotiation had become inspired, and with an expression of which their final official report had closed in the following words:

"It now only remains for us to say that in all our relations with Mr. Trist we found ample motives to appreciate his noble character; and if at any time the work of peace is consummated, it will be done by negotiators adorned with the same estimable gifts which, in our judgment, distinguish this minister."

These men became the nucleus of a peace party, which engaged forthwith in exertions that were unweariedly plied. After a most arduous struggle they accomplished the object of reconstituting the Government, and at the same time establishing the peace party in entire possession of it in all its branches.

So soon as the executive branch had become solidly constituted its first action consisted in the selection of four commissioners to meet Mr. Trist for the conclusion of a treaty upon the basis that had been proposed by him in the first negotiations. At the head of this new list was no longer seen the name of Herrera, but that of his bosom friend, Couto, associated with that of one more of the former four, and two new names, Don Manuel Rincon and Don Luis Gonzaga Cuevas, both men of the highest personal standing throughout the Republic and conspicuous among the leaders of the peace party. In being made acquainted with this selection, Mr. Trist was informed why all four of the commissioners could no longer be the same whom he had formerly met. General Herrera was lying dangerously ill, and General Mora y Villamil's services were needed in the new cabinet as minister of war.

Thus did the case stand with reference to the certain and early accomplishment of the object for which he had been sent to Mexico, when, on the 16th of November, 1847, Mr. Trist received his letter of recall, under date October 6, the triplicate of which letter was the first to reach him as an inclosure in another dispatch from the Secretary of State, dated the 25th of October, reiterating the recall. The original was delivered to him on the day following by the person specially sent with it from Washington.

In that letter of recall the ground of the President's determination to discontinue the mission is stated in the following words:

"They (the Mexican Government) must attribute our liberality to fear, or they must take courage from our supposed political division. Some such cause is necessary to account for their strange infatuation. In this state of affairs, the President, believing that your continued presence with the army can be productive of no good, but may do much harm by encouraging the delusive hopes and false impressions of the Mexicans, has directed me to recall you from your mission and instruct you to return to the United States by the first safe opportunity."

The "state of affairs" really existing in Mexico, with reference to the object for which the mission intrusted to Mr. Trist had been instituted, was, then, the direct reverse of that supposed by the President and by him assigned as his reason for withdrawing that mission, and for the further determination on his part expressed

<sup>1</sup>As translated at Washington, by order of the Senate, Thirtieth Congress, first session. (Senate Executive, No. 52, p. 345.)

in the letter of recall "not to make another offer to treat." \* \* \* "they must now sue for peace." \* \* \* "what terms the President may be willing to grant them will depend upon the future events of the war, and the amount of the precious blood of our fellow-citizens, and the treasure which shall, in the meantime, have been expended."

Thus situated, Mr. Trist did, nevertheless, forthwith enter upon a course of strict conformity with his recall. In his dispatch, acknowledging the simultaneous receipt of the recall, and its reiteration under dates October 6 and 25, he says:

"My first thought was immediately to address a note to the Mexican Government, advising them of the inutility of pursuing their intention to appoint commissioners to meet me. On reflection, however, the depressing influence which this would exercise upon the peace party, and the exhilaration which it would produce among the opposition being but too manifest, I determined to postpone making this communication officially, and meanwhile privately to advise the leading men of the party here and at Queretaro of the instructions which I had received.

"Their spirits had, for the last few days, been very much raised by the course of events at Queretaro; and one of them (the second of the two heads mentioned in a late dispatch) had called on me the very day after your two dispatches came to hand, for the purpose of communicating the 'good news' and making known the 'brightening prospects.' Upon my saying that it was all too late, and telling what instructions I had received, his countenance fell, and flat despair succeeded to the cheeriness with which he had accosted me. The same dejection has been evinced by every one of them that I have conversed with, while joy has been the effect upon those of the opposite party who have come to inquire into the truth of the newspaper statement from the Washington Union. By both parties the peace men were considered floored; this was the coup de grace for them.

"Mr. Thornton was to set out (as he did) next morning for Queretaro, and I availed myself of this privately to apprise the members of the Government of the state of things with reference to which their exertions in favor of peace must now be directed, and to exhort them not to give up, as those here had at first seemed strongly inclined to do, and as it was believed that those at Queretaro would at once do. Fortunately, however, when the news reached there they had just taken in a strong dose of confidence—the result of the meeting of the governors—which served to brace them against its stunning effect. \* \* \* The peace men did not cease for several days to implore me to remain in the country; at least until Mr. Parrott shall have arrived with the dispatches, of which report makes him the bearer. To these entreaties, however, I have turned a deaf ear, stating the absolute impossibility that those dispatches should bring anything to change my position in the slightest degree.

"I recommended to the peace men to send immediately, through General Scott, whatever propositions they may have to make: or to dispatch one or more commissioners with me. After full conversations on the subject, however, I became thoroughly satisfied of the impracticability of either plan: it would, to a certainty, have the effect of breaking them down. The only possible way in which a treaty can be made is to have the work done on the spot—negotiation and ratification to take place at one dash. The complexion of the new Congress, which is to meet at Queretaro on the 8th of January, is highly favorable. This will be the last chance for a treaty. I would recommend, therefore, the immediate appointment of a commission on our part."

In a letter to his wife, accompanying that dispatch, he sent a message to Mr. Buchanan, (the Secretary of State,) beseeching him, as he valued our Union, to lose not an instant in seizing the last chance for peace; and suggesting that, to gain time, authority to conclude a treaty should be forthwith dispatched to General Scott, or to Gen. W. O. Butler, of Kentucky, or to both conjointly, the last-named officer being a member of the Democratic party, who had been sent to take command of our Army as General Scott's successor.<sup>1</sup>

The position in which Mr. Trist was placed, by his recall, toward the peace party could not but be a most painful one. At his instigation it was, as our country's representative, and on the strength of the assurances given by him of the sincerity and earnestness of her and her government's desire for peace, that this party had built itself up: and, after a most arduous struggle, had accomplished what was universally regarded as an impossibility." In this struggle its leaders, and every prominent man whom they had succeeded in enlisting in the same cause, had staked everything which can be staked in a political contest by the

<sup>1</sup> This not in my official dispatches, but I have the letter.

<sup>2</sup> This nowhere stated in my dispatches; but any historian would infer all this from what is there stated.

citizens of a republic, torn, as Mexico has proverbially been, by convulsions of the most violent kind. From the assurances which he had given them, they regarded it as impossible that the President of the United States, upon receiving the dispatches acquainting him with the true "state of affairs" in Mexico and of the progress which had been made toward the consummation of the object which the bearer of those assurances had been sent there to give, could fail to revoke the recall which placed them in a position so perilous; hence the confident belief on their part that the revocation of that recall must be on its way, and hence their entreaties to Mr. Trist to delay his departure.

To the strength of the appeal so made to him, to its strength on the mere ground of simple good faith between man and man toward the patriotic men whom he had been instrumental in entrapping into that cruel position, he could not be otherwise than fully sensible. To find himself under the necessity of turning a deaf ear to it must have been most trying to his feelings.

But he was ordered "to return by the first safe opportunity;" and the possibility of his being shaken in his determination to obey this order by any such expectation as that of his recall being revoked was precluded by the whole tenor and spirit of the letter recalling him, and most especially its closing paragraph, which said:

"Should you, upon its arrival, be actually engaged in negotiations with Mexican commissioners, these must be immediately suspended. \* \* \* You are not to delay your departure, however, awaiting the communication of any terms from these commissioners for the purpose of bringing them to the United States."

So that, had his recall found him pen in hand to affix his signature to a perfected treaty of peace, this treaty word for word identical with the project given him for his guidance, our commissioner would, upon reading those instructions, have become bereft of all authority to write his name to that treaty. Had the "state of affairs," at the moment when those instructions reached the City of Mexico, proved to be such as to render this expenditure of one single drop of ink the sole remaining requisite for preventing all further effusion of what, in those same instructions, is called "the precious blood of our fellow-citizens;" even if this had proved to be the "state of affairs" which that dispatch found to exist there, yet, so very guardedly and effectually had it provided against the expenditure of this one drop of ink, "the precious blood" must have continued to flow. It must have continued to be "expended;" to be expended to such "amounts," whatever this amount might turn out to be, as might be determined by the protraction of the war "for an indefinite period." For this is the term which, less than five months after that recall left the city of Washington, was in the President's message to the Senate, February 29, 1848, assigned by him to the probable duration of the war, in case the Senate should fail to comply with his express "recommendation" to adopt and ratify as a national act the work done by the ex-commissioner in direct contravention of the above-quoted, most carefully devised, and most skilfully framed orders for securing against even the signing of a treaty, should this prove to be the sole remaining requisite for the consummation of the object for which the mission had been instituted.

That "first safe opportunity," by which Mr. Trist was thus ordered to return, did not occur until the 10th day of December. When the order reached him, (November 16, 1847,) it was expected that an army train for Vera Cruz would leave the City of Mexico about the end of that month. Owing, however, to the unexpected detention at that port of a train which had been sent there for supplies, the departure of the one with which Mr. Trist had prepared to leave was postponed, first, to the 4th of December, and then to the 10th. On this day the train started. Mr. Trist, however, did not go with it. Had it been delayed no later than the 4th, in such case his return journey would have begun on the morning of that day. Then must "the precious blood of our fellow-citizens" have continued to be "expended," and our country have been made to believe this expenditure, so religiously abhorrent to our Executive and so piously deprecated by him, attributable solely to that "strange infatuation" on the part of the Mexicans, which was so deplored by the President and the Secretary of State, and which they found themselves utterly at a loss to account for, except on the supposition that Mexico fancied our country to be afraid of her.

The postponement of the departure of that train to a day later than the 4th was big with consequences of vast moment. That day—the 4th of December in the year of our Lord 1847—proved to be the appointed time in the course of human events for an incident which, though in itself of the most casual, and trivial, and commonplace kind, had for its effect to reverse the gloomy aspect which things had worn at the rising of the sun, and had continued to wear till near his setting, boding the indefinite protraction of the war.

From this incident arose a determination on the part of Mr. Trist, which, in

itself, in the circumstances under which it was taken, and in the results attending it, constitutes an event that stands alone in history, and is not likely ever to have a parallel.

This determination, with the motives which impelled to it, are found stated in a confidential letter immediately written by him, and a copy of which was transmitted as promptly as possible to the Secretary of State at Washington, was among the papers subsequently communicated to the Senate, and by their order printed. The dispatch transmitting it to the Secretary of State begins as follows:

"HEADQUARTERS OF THE UNITED STATES ARMY,  
"Mexico, December 6, 1847.

"Hon. JAMES BUCHANAN,  
"Secretary of State, Washington:

"SIR: Referring to my previous dispatches in regard to the political state of this country, and to the inclosed copy of a confidential letter, under date the 4th instant, to a friend at Queretaro, to whose able and indefatigable cooperation in the discharge of the trust committed to me, I have, from the very outset, been greatly indebted, I will here enter at greater length into the considerations by which I have been brought to a resolve so fraught with responsibility to myself; whilst, on the other hand, the circumstances under which it is taken are such as to leave the Government at perfect liberty to disavow my proceeding, should it be deemed disadvantageous to our country."

The friend at Queretaro, "to whose able and indefatigable cooperation" Mr. Trist so acknowledged his deep obligations, was Mr. Edward Thornton, at that time, owing to the retirement of the British minister from ill-health, left in charge of the British legation in Mexico. The same gentleman is now the representative of his sovereign to our Government.

The resolve so formed by the ex-commissioner of the United States was to this effect: Should the Mexican Government be willing, he would take upon himself to engage with its plenipotentiaries in the work which had been so unexpectedly prevented by his recall. All such action on his part would, of course, be devoid of validity and of all binding force upon our Government. Nevertheless, should the negotiation result in their agreeing upon the terms of a treaty, such treaty would secure to the cause of peace the chance of its adoption by the Government of the United States, upon its being presented with the option so to put an end to the war.

The attempt so ventured upon was crowned with success. His proposal was accepted by the Mexican Government. The plenipotentiaries, who, just before his recall arrived, had been selected to meet him, were commissioned. They at once went to work, and the work was plied so diligently that in about six weeks' time from their first regular conference their task was brought to its desired end by the signing at Guadalupe Hidalgo on the 2d of February, 1848, of the document, in the form of a treaty, which was immediately sent to the Secretary of State at Washington.

Every possible provision having been made for its speedy conveyance, it reached its destination in sixteen or seventeen days after signature—the quickest time ever made by man between the capitals of the two Republics—the bearer being James L. Freaner, a native of the State of Maryland, and the only man who had been in any way instrumental in determining Mr. Trist to make the attempt of which that document was the result.

On the 23d of February, 1848, some days after its arrival at Washington, the document received from Mr. Trist was communicated by the President to the Senate, with a message bearing date the day previous (February 22), beginning thus:

"I lay before the Senate, for their consideration and advice as to its ratification, a treaty of peace, friendship, limits, and settlement, signed at the city of Guadalupe Hidalgo on the 2d day of February, 1848, by N. P. Trist, on the part of the United States, and by plenipotentiaries appointed for that purpose on the part of the Mexican Government."

By the Executive action so taken upon the document the invalidity of that in which it originated was cured, and it became transmuted into a genuine treaty so far as the President's sole authority was competent to impart this character to it.

A week later, on the 29th of the same month, in another message to the Senate the President took occasion to explain that his first message was intended to be understood as positively recommending the treaty for adoption: the words upon this point in the second message being:

"I considered it to be my solemn duty to the country, uninfluenced by the exceptionable conduct of Mr. Trist, to submit the treaty to the Senate with a recommendation that it be ratified with the modifications suggested."

Incorporated with this express recommendation are the President's reasons for considering it his solemn duty to make it; among which assigned reasons is his belief "that if the present treaty be rejected, the war will probably be continued, at a great expense of life and treasure, for an indefinite period."

After thorough discussion by the Senate, extending from February 23 to March 10, in which it underwent various modifications, its ratification was advised and consented to by a vote of 38 yeas to 14 nays.

This action of the Senate was immediately followed by the formal ratification of the treaty on the part of the United States; whereupon a joint commission was forthwith dispatched to Mexico for the purpose of there procuring its ratification as amended by the Senate.

The rank of this commission and the strictly limited purpose for which it was sent are both explained with great particularity in two letters of the Secretary of State of the United States, under date of March 18, 1848, one of which letters, a very long and elaborate production, manifesting the great importance attached to the object in view, was immediately dispatched to Mexico as a forerunner of the commission. From it the following extracts are made:

[The Secretary of State of the United States to the minister of foreign relations of the Mexican Republic.]

"SIR: Two years have nearly passed away since our Republics have been engaged in war. Causes which it would now be vain, if not hurtful, to recapitulate have produced this calamity. Under the blessing of a kind Providence this war, I trust, is about to terminate. \* \* \* I most cordially congratulate you on the cheering prospect. This will become a reality as soon as the Mexican Government shall approve the treaty of peace between the two nations concluded at Guadalupe Hidalgo on the 2d of February last, with the amendments thereto which have been adopted by the Senate of the United States. \* \* \*

"I have now the honor to transmit you a printed copy of the treaty, with a copy in manuscript of the amendments and final proceedings of the Senate upon it. This is done to hasten, with as little delay as practicable, the blessed consummation of peace, by placing in the possession of the Mexican Government at as early a period as possible all the information which they may require to guide their deliberations. \* \* \*

"Recurring to the amendments adopted by the Senate it affords me sincere pleasure to know that none of the leading features of the treaty have been changed. \* \* \*

"The President, by and with the advice and consent of the Senate, has appointed the Hon. Ambrose H. Sevier, of the State of Arkansas, and the Hon. Nathan Clifford, of the State of Maine, commissioners to Mexico, with the rank of envoy extraordinary and minister plenipotentiary. Mr. Sevier has for many years been a distinguished Senator of the United States, and for a considerable period has occupied the highly responsible station of chairman of the Committee on Foreign Relations. Mr. Clifford is an eminent citizen of the State of Maine, is Attorney-General of the United States, and a member of the President's Cabinet. They will bear with them to Mexico a copy of the treaty, with the amendments of the Senate, duly ratified by the President of the United States, and have been invested, either jointly or severally, with full powers to exchange ratifications with the proper Mexican authorities.

"That this final act may be speedily accomplished, and that the result may be a sincere and lasting peace and friendship between the two Republics, is the ardent desire of the President and people of the United States."

The other letter from the Secretary of State was addressed to the joint commissioners, Messrs. Sevier and Clifford. In it the object of their mission was thus strictly defined:

"You are not sent to Mexico for the purpose of negotiating any new treaty, or of changing in any manner the ratified treaty which you will bear with you. None of the amendments adopted by the Senate can be rejected or modified, except by the authority of that body. Your whole duty, then, will consist in using every honorable effort to obtain from the Mexican Government a ratification of the treaty in the form in which it has been ratified by the Senate; and this with the least practicable delay. \* \* \* Your mission is confined to procuring a ratification from the Mexican Government of the treaty as it came from the Senate."

Nevertheless, to provide for a contingency which might occur, the instructions continue thus:

"Should you find it impossible, after exhausting every honorable effort for this purpose, to obtain a ratification from the President and Congress of Mexico of the treaty as it has been amended by the Senate, it may then become necessary for

you, in conversation with the proper Mexican authorities, to express an opinion as to what portion of the Senate's amendments they might probably be willing to yield for the sake of restoring peace between the two Republics."

The very earnest solicitude for the definite consummation of the treaty manifested by the Secretary of State in both these letters, and most especially in the passage last quoted, presents a striking contrast to the spirit pervading the letter or recall from the same hand, written less than five months before. It brings into strong relief the high value to which the result attending Mr. Trist's mission had risen in the estimation of our Executive in the intervening period, and even in the short portion of it—just one month—which had elapsed since the arrival of the treaty at Washington, and the delay thereupon experienced by it in being communicated to the Senate.

It seems also to bring into yet stronger relief a further result of that mission which was soon to disclose itself. This consisted in the course pursued by the Mexican Government (by the Congress no less than the Executive) by which the anxieties expressed in those two letters were speedily dissipated. That course constituted a conclusive proof that the "state of affairs" truly existing in Mexico, with reference to the purpose of Mr. Trist's mission, was such as to afford no better grounds for anxiety about the ratification of the treaty then than at the time of his recall it had afforded for the "belief" which, in the President's message to the Senate, February 22, 1847, was stated to have "dictated" that recall: the words of the President upon this point being: "I deem it my duty to state that the recall of Mr. Trist as commissioner of the United States, of which Congress was informed in my last annual message, was dictated by the belief that his continued presence with the Army could be productive of no good, but might do much harm," etc.

Upon the subject of ratification Mr. Trist, in his dispatch of February 2, 1848, transmitting the treaty, had written:

"With respect to the ratification of the treaty, I believe the chances to be very greatly in its favor. \* \* \* The elections are yet to be held in the States of Vera Cruz and Puebla. In the former the puros (war party) never had any strength whatever, in the latter not enough to counteract a vigorous and concerted effort on the part of the moderados. These elections will now speedily take place, under the arrangements for facilitating them which will be entered into in pursuance of the second article of the treaty (inserted with a special view to this object); and the result will, according to every probability, give to the peace party in Congress a preponderance so decided as to insure its prompt ratification."

Ten days later, his dispatch No. 29, February 12, 1848, transmitting the maps referred to in the fifth article of the treaty, closes with these words:

"I take great pleasure in stating that the probabilities of the ratification of the treaty by Mexico, which were previously very good, have been growing stronger and stronger every hour for several days past, and that there is good reason to believe that it may take place within two months of this date.

"In the accompanying Monitor Republicano of the 11th instant will be found the circular of the minister of relations to the governors of States informing them of the signature of the treaty."

These anticipations of Mr. Trist, both as to the results of the election in augmenting the preponderance already acquired by the peace party in Congress and as to the use which would be made of this preponderance, were soon verified to the very letter, and far beyond it.

Intelligence reaching Mexico that the Senate of the United States were engaged in making amendments to the treaty, all action of the Mexican Government in regard to its ratification was suspended until the amendments so made should become known. They became so officially by the letter of the Secretary of State of the United States, March 18, to the minister of relations. Upon its receipt by him, the treaty, as ratified by the Government of the United States, with the amendments of our Senate, was laid before the Mexican Congress, both houses of which must advise and consent to a treaty before it can be ratified. First taken up in the chamber of deputies, it was adopted there by a large majority; then in the senate it passed that body by a vote of 33 yeas to 5 nays.

Thus was the question of ratification of the treaty, as amended by our Senate, definitely settled. Thus was it settled by the spontaneous action of the Mexican Congress, this action terminating by that vote in the senate of 33 yeas to 5 nays on the 25th of May, 1848, just one month and thirteen days after the expiration of the "two months" which on the 12th of February Mr. Trist had assigned for this action upon the treaty in its primitive form.

This definitive ratification took place before our joint commissioners could reach Queretaro, the seat of the Mexican Government. Thus far did the event fall short of verifying the apprehension expressed by our Secretary of State lest they "should find it impossible, after exhausting every honorable effort for this purpose, to obtain a ratification." Thus far did those commissioners find themselves from

the necessity, "in conversation with the proper Mexican authorities, to express an opinion as to what portion of the Senate's amendments they might probably be willing to yield for the sake of restoring peace between the two Republics."

The first dispatch of the joint commissioners, after reaching their destination, was as follows:

CITY OF QUERETARO,  
May 15, 1848—9 o'clock p. m.

SIR: We have the satisfaction to inform you that we reached this city this afternoon at about 5 o'clock, and that the treaty, as amended by the Senate of the United States, passed the Mexican senate about the hour of our arrival by a vote of 33 to 5. It having previously passed the house of deputies, nothing now remains but to exchange the ratifications of the treaty.

At about 4 leagues from the city we were met by a Mexican escort under the command of Colonel Herrera, and were escorted to a house prepared by the Government for our reception. The minister of foreign relations and the governor of the city called upon us and accompanied us to dinner, which they had previously ordered. So far as the Government is concerned, every facility and honor have been offered us, and Señor Rosa, the minister of foreign relations, desires us to state that he feels great satisfaction in meeting the ministers of peace from the United States.

We will write you again shortly and more at length, as the courier is on the point of departure. The city appears to be in a great state of exultation, fireworks going off, and bands of music parading in every direction.

We have the honor, etc.,

A. H. SEVIER.  
NATHAN CLIFFORD.

Hon. JAMES BUCHANAN,  
*Secretary of State.*

*Cost of the joint commission sent to Mexico for the purpose of obtaining the ratification of the treaty by that Government.*

Paid to A. H. Sevier as commissioner's outfit.....	\$9,000.00
Salary for two months and twenty-nine days.....	2,250.00
Return allowance.....	2,250.00
Total for two months and twenty-nine days' service.....	\$13,500.00
Paid to Nathan Clifford as commissioner's outfit.....	9,000.00
Salary for four months and ten days.....	3,256.48
Return allowance.....	2,250.00
Total for four months and ten days' service.....	14,506.48
Paid to R. M. Walsh, as secretary, salary for four months and ten days.....	722.19
Total cost of the joint commission on that service.....	28,728.67

*Remarks on the above.*—In the case of Mr. Clifford, the "return allowance" does not appear on the public accounts as part of the cost of the joint commission for this reason: He remained in Mexico as envoy extraordinary and minister plenipotentiary from July 28, 1848, to September 6, 1849, for his service in which capacity he was paid a new "outfit," and his "return allowance" appears in this account as follows:

Paid to Nathan Clifford as envoy extraordinary and minister plenipotentiary from July 28, 1848, to September 6, 1849, outfit.....	\$9,000.00
Salary for one year, one month, and eight days.....	10,002.42
Return allowance.....	2,250.00
	21,252.42
Total paid to N. Clifford for one year, five months, and eighteen days, in the two capacities.....	33,508.90
Add contingent expenses for one year, one month, and eight days.....	\$740.02
Add salary of secretary for one year, one month, and eight days.....	2,207.77
	2,947.79
Total cost of service of N. Clifford in both capacities.....	36,456.69

[See pp. 649, 698.]

**FORTY-FIRST CONGRESS, THIRD SESSION.****February 7, 1871.**

[Senate Report No. 347.]

Mr. Sumner, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the memorial of Mrs. Francis A. McCauley, praying reimbursement of extraordinary expenses incurred by her husband while consul at Tripoli, have had the same under consideration, and beg leave to report:

The petitioner, after stating that her husband, Daniel S. McCauley, "was obliged to incur expenses far beyond his salary and all allowances made by his Government," prays Congress to provide for receiving proof of these extraordinary expenses, and making payment of so much as may be proved.

A review of the history of Mrs. McCauley's previous applications to Congress for relief is necessary to explain the position in which she stands.

Mr. McCauley was consul at Tripoli from 1831 to 1848, and consul-general at Alexandria from 1848 to 1852, in which latter year he died.

Mrs. McCauley returned to this country, and in the year 1853 began her appeal to Congress.

On the 31st December, 1853, she presented a petition in the House of Representatives, stating that her husband had suffered loss by injuries to his property from the enemy's fire upon the town in the civil war then going on, and by change of residence rendered necessary from the unsafe position of the consular residence, and praying payment of \$20,000 on account thereof.

In this petition it appears that she had already received a gratuity of \$1,600 from Congress. The petition was referred to the Committee on Foreign Affairs, and, February 15, 1854, reported upon adversely.

On the 16th February, 1860, this petition was again introduced, and referred as before. It was not reported on.

With the next Congress, April 14, 1862, Mrs. McCauley appeared with the same petition. This time she was more fortunate, and on the 17th April, 1862, Mr. Crittenden presented a favorable report, with a bill for her relief. (Bill, Thirty-seventh Congress, second session, H. R. 405; do. Report 81.)

On May 16, the bill came before the House for consideration. Mr. Crittenden explained the case at length, and urged the passage of the bill. A considerable debate arose, in which other members of the Committee on Foreign Affairs spoke in opposition. The subject was carefully examined and discussed, when finally a vote was taken and the bill rejected. (Cong. Globe, Thirty-seventh Congress, second session, pp. 2181-2183.)

Mrs. McCauley presented a new petition to the same effect as the former, December 4, 1862. The committee had hardly had time to forget the discussion of the previous May, and on the 11th December reported, with request to be discharged.

Having failed in repeated attempts upon the House, Mrs. McCauley now comes to the Senate with a new draft of the old petition in her hands, and it is this that is now before the committee.

The history of Mrs. McCauley's exertions does not end here. On the 17th of March, 1856, she presented to the House a petition for extra salary due her husband on account of judicial services during

the period from 1831 to 1852, claiming the same under the act of August 11, 1848, to carry into effect certain provisions between the United States and China and the Ottoman Porte. The Committee on Foreign Affairs reported adversely August 8, 1856 (Thirty-fourth Congress, first session, Report 336). On the 9th of February, 1857, additional papers were filed, but caused no alteration in the decision. On the 12th of January, 1858, this petition was again presented, and additional papers February 23, but no report was made. At the same time she petitioned the Senate, January 27, 1858, for salary for judicial services from 1848 to 1852. A favorable report was made, and a bill introduced March 31, 1858, giving her \$4,200, which passed both Houses, and was approved March 3, 1859.

During the four years Mrs. McCauley remained quiescent, but she appeared again, petition in hand, March 13, 1862, before the House, this time demanding salary for judicial services from 1831 to 1848. On the 12th of June, 1862, it was ordered that the papers be withdrawn from the files of the House, and June 24 they were presented to the Senate, and referred to the Committee on Foreign Relations. July 14 the committee was discharged from their further consideration.

Shortly previous to this, in 1861, Mrs. McCauley had laid her case before the Committee on Claims of the Senate, which had requested to be discharged 24th of January, 1862, and she had obtained leave to withdraw February 10, preparatory to her attempt on the Committee on Foreign Relations, of 24th June, 1862.

Once again Mrs. McCauley's name appeared. She obtained leave to withdraw her papers from the files of the Senate January 31, 1867, they were referred to the Committee on Foreign Relations February 4, and February 27 the committee requested to be discharged. Here ended the second claim.

The committee, in deciding upon the petition now before it, might well have been content to rest upon the adverse decision of the House in 1862, when the claim was carefully considered; but they have looked themselves into the circumstances of the case, and do not find that it justifies any measure of relief. The petitioner has nothing to show what expenses were incurred, or their amount, and nothing upon which to estimate the alleged damages. The sum claimed in her former petitions rests upon her opinion of what would be a proper compensation for the annoyances she has suffered.

This case is but one of a familiar class. Consular and other officers are appointed at their own solicitation; they reach their port, find their duties irksome, and their salaries small. They return home and begin their application to Congress for additional compensation. Such appeals should not be encouraged. It should be understood that he who takes an office takes it knowingly cum onere.

Mrs. McCauley's is a chronic case. With an avowed determination of never ceasing her efforts until she obtained from Congress the further allowance she desired, she has presented her case again and again after it has been heard with attention, judged, and rejected.

The following is a statement of the sums paid to or for Mrs. McCauley since her husband's death, not including consular salary:

Funeral expenses paid by W. W. Moore, acting consul-general .....	\$259.30
Extra office rent, under act of March 3, 1853 .....	1,466.08
To enable Mrs. McCauley to return home .....	750.00
Contingent expenses of consulate from July 1 to October 24, 1858 .....	151.75
Expense of a monument over Mr. McCauley's grave .....	227.55
Judicial services, act 3d March, 1859 .....	4,200.00

7,054.68,

Finally, the Department of State has expressed its decided opinion upon this claim in a communication to the chairman of this committee, dated July 11, 1862.

Mr. Seward says:

With regard to the memorial praying compensation for judicial services, upon which the Committee on Foreign Affairs have reported adversely, the Department hardly deems it necessary to express an opinion. It has uniformly refused to sanction any claim on the part of consular officers in the Turkish dominions for judicial services, even under the act of 1848, from a conviction that no such claim was authorized by that act. A sufficient reason, however, for the rejection of the one under consideration might be found in the fact that no such services as those for which compensation is asked by the memorialist are known to have been performed by Mr. McCauley.

Touching the claim for extraordinary expenses, etc., I have the honor to state that it does not appear from the files of this Department that Mr. McCauley's withdrawal to Malta was either authorized or sanctioned, as is alleged in the memorial. Moreover, during his residence there his salary was allowed as usual, and from the proximity of the island to Tripoli, it is not perceived how the consul could have been subjected to expenses in removing thither which his compensation was not fully adequate to cover.

The committee report adversely upon Mrs. McCauley's petition, and recommend that it be indefinitely postponed.

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February 16, 1871.

[Senate Report No. 367.]

Mr. Sumner made the following report:

The Committee on Foreign Relations, to whom was referred the act for the relief of John W. Massey (H. R. 2095) have had the same under consideration, and beg leave to report:

John W. Massey was appointed and confirmed consul of the United States at Paso del Norte, Mexico, in 1862, and in accordance with instructions from the Secretary of State, Mr. Seward, started for his post.

Having arrived at Fort Leavenworth, he found the road so infested with guerillas that, in accordance with the advice of Generals Halleck and Blunt, he abandoned the attempt to proceed, and returned home, when he tendered his resignation, which was accepted.

In answer to a letter from Mr. Massey, asking whether the traveling expenses he had incurred would be paid by the Department, Mr. Seward replied, under date of July 16, 1862:

It is not, however, in its [the Department's] power to allow the compensation you ask, inasmuch as the fund appropriated for the salaries of consuls can only be applied to the transit allowance when such transit is actually accomplished.

And again, July 31, 1862, Mr. Seward says:

Your petition to Congress to be reimbursed the amount actually expended in the honest effort to reach your post would perhaps be favorably considered.

The committee recommend the passage of the act.

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#### FORTY-SECOND CONGRESS, SECOND SESSION.

February 20, 1872.

[Senate Report No. 42.]

Mr. Hamlin made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of William Blanchard for relief, having considered the same, submit the following report:

The memorialist, William Blanchard, was United States consul at Melbourne, Australia, in 1862. While in the discharge of his duties as consul evidence was presented to him of a murder alleged to have been committed upon the high seas, on board the American ship *Herbert*, by Bangs Pepper, jr., first mate, and Thomas Hull, second mate, of said ship. Said Blanchard, as consul, made application to the colonial government for the extradition of the alleged criminals, which application, after an examination of the witnesses by the colonial government, was granted.

The consul detained ten of the crew of said ship, to be sent to the United States with the prisoners to be used as witnesses in the case. To these witnesses the consul paid board and wages, while so detained, for about two months, the wages amounting to the sum of \$219.16. For that sum and an additional sum of \$50.50 for clerk hire the memorialist asks relief. These sums were disallowed in the settlement of his accounts at the State Department, but the accounting officer of the Department, upon whose report the amount paid for witnesses' wages was disallowed, said:

While the allowance of wages is no more than fair to the witnesses, I am not aware of any law authorizing its payment by the consul.

The amount paid as wages to the witnesses is small, but having been paid by the consul to aid in the promotion of justice and the punishment of crime, your committee believe it eminently just and wise that the same should be allowed and paid him by the Government. Vouchers for the payments are on file in the State Department.

A bill is herewith reported to reimburse the consul for the amount of wages paid to said witnesses, but not including anything for clerk hire.

#### FORTY-THIRD CONGRESS, FIRST SESSION.

June 15, 1874.

[Senate Report No. 451.]

Mr. Howe submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S.623) to enable the Secretary of State to pay salaries to certain of the commissioners to the Vienna Exposition, report:

That on the 10th of June, 1872, Congress passed a law, appended hereto and marked A. (Stat., vol. 17, p. 389.)

Under this law an agent was appointed, who designated thirteen assistants, under whose care articles were collected for exhibition and placed on board United States ships designated to carry them to Trieste.

On the 14th of February, 1873, Congress passed a joint resolution, appended and marked B. (Stat., vol. 17, p. 637.)

Under this resolution the commissioners for whose relief the bill is proposed were appointed. The artisans and scientific men had their expenses limited to \$1,000. The last clause of the first section limits salaries and expenses of all persons "appointed to places authorized in this resolution" to \$50,000 in the aggregate; no one to receive more than \$5,000.

The names of the appointees were published by the press a few days after the passage of the resolution, and several of them, it is stated, made their preparations to sail, and one, at least, actually did sail

before the receipt of the official notification of appointment. Many of them, it is claimed, supposed, on reading the law, that they were to be allowed salaries, within the discretion of the Secretary of State, in addition to the allowance limited for expenses, and for the following reasons:

They were the only persons "appointed to places authorized in this resolution" who were to receive any money "for expenses or otherwise," and the agents or executive commissioners appointed under the act of June 10, 1872, were cut off by its terms from all compensation. A limit upon expenses, which might otherwise exceed a reasonable sum, did not seem to debar the appointees under the resolution of 1873 from receiving a compensation, also limited, for their services.

They were to be appointed, under the law, from classes not usually wealthy, and presumably unable, not only to accept honorary positions and to pay their own expenses, but also, without serious loss, to accept positions in which their necessary expenses, or rather a very limited portion of them, were to be paid, and to leave behind them sources of income on which their families might be dependent.

Their duties, under the law, of investigation and report, were of an arduous nature, requiring special qualifications and occupying a long time in their performance, and in the result of their labors the whole people, as distinguished from the few exhibitors for whose benefit the balance of the \$200,000 was appropriated, were interested.

These artisans and scientific men therefore supposed, up to the date of their formal notification of appointment, that they were not only to be (partially) reimbursed for actual expenses incurred, but also to be compensated for their services in the same manner as other Government agents or agents of private parties sent abroad to perform particular duties; and with this understanding several of them, as before stated, made their arrangements as soon as their names were announced in the papers.

Upon the receipt of that formal notification, however, they found that the State Department had placed a different construction on the law, and they then accepted the positions with the promise only of their expenses—"not to exceed \$1,000"—at considerable pecuniary sacrifice, as must be evident to anyone familiar with the expense of a European trip.

The duties of the artisans and scientific men, as specified in the law, were to "attend said exhibition and report their doings and observations" to the President. No duty was required of the honorary commissioners, and it was stated in the debates that none would be expected.

The notification of appointment informed the artisans and scientific men (par. 2) that in performing their duties they would be required to remain in Vienna the entire time of the exhibition, from May 1 to November 1. Although this order was subsequently revoked on representations made by cable from Vienna, it involved some of the appointees in considerable expense, requiring them to reach Vienna at a time when prices were enormously high, and in some cases compelling them, in order to secure quarters at anything like reasonable rates, to pay for them for the entire six months in advance, no portion of which payment, of course, was ever refunded.

Regulations were issued by the State Department and sent out with the commissions. While the law was silent as to the manner of performing their duties, the regulations (chap. 1) required the artisans and scientific men to make certain kinds of reports, not only upon their

specialties, but also upon the exhibition as a whole, and upon the American department. The honorary commissioners were also required to make reports, if designated by the artisan and scientific committee.

All commissioners were also required, both by the notification of appointment (par. 2) and the regulations (art. 11), to cooperate with the commissioner in charge of the American department, advising and assisting him in his special duties. Owing to the confusion prevalent in the American department at the opening of the exposition, caused by the suspension of the executive commission, many exhibitors were threatening to withdraw their goods and return to America. At this juncture the temporary executive commissioner was compelled to call upon the members of the reporting and honorary commissions, which had not been suspended, to take charge of certain groups in the exhibition and assist in arranging them, which they did. It is claimed that these services of technically skilled men were of the greatest benefit not only in presenting the department in the best shape possible with the limited number of articles sent over for exhibition, but also in allaying the bad feeling existing among exhibitors at that time. This extraordinary duty occupied most of those who were called upon to perform it until the end of May at least. The American department was not formally opened until the 10th of June.

The artisans and scientific men were also required by the regulations (articles 1, 2, and 3), in addition to making the individual reports provided for in the law and regulations, to constitute themselves into a committee, and to take charge of the whole matter of reports, designating the subjects and the persons to write upon them. This duty, as shown by the records of the committee, took up considerable time.

By the fifth article of the regulations they were required to select the American jurors, a work of much difficulty, considering the disinclination of competent and disinterested Americans to come to Vienna and to perform nearly two months' service in the hot season without pay. The records of the committee show, also, the time and labor involved in this service.

By the fifth and sixth articles they, as well as the honorary commissioners, were themselves required to serve on juries, if necessary, and for this service, the most important and delicate of all connected with the exhibition, and on the proper performance of which its entire success depended, which was performed by all those affected by this bill, they received nothing, while the English jurymen, it is claimed, with a department not much larger or more important, were paid £300 a piece for jury duty alone, and the Swiss, French, German, and Italian jurymen in proportion. The catalogue of awards made on the 18th of August shows a list of between 500 and 600 prizes obtained by the exertions of the American jurors, certainly as large number, in proportion to the number of exhibits, as was given to other countries.

The extra duties above enumerated occupied the time of those who performed them all until the middle of July at least, to the exclusion of their reports. Where, as was frequently the case, the preparation of reports necessitated an extra expense, in the way of visiting factories where articles exhibited were produced, or other sources of information away from Vienna, no extra allowance was made by the Department.

The facts above stated are of record in the State Department, and the services performed and extra expenses incurred in the preparation of reports have been fully shown to the committee.

If it be said, as it may, perhaps, with justice, that the allowance made the artisans and scientific men would have enabled them to visit the exhibition, gather material for a report, and return immediately home, or that, as regards the honorary commissioners, the honor of writing a report should be considered an equivalent for the labor which it involved, these extraordinary services and sacrifices would still remain uncompensated. A moment's reflection will satisfy any one that the amount limited in the bill (even in addition to the \$1,000 already paid the artisans and scientific men) will not cover the "actual and reasonable expenses" of one person during a voyage of 4,000 miles each way and a six-months' stay at the most expensive city in Europe during the most expensive time in its history. It appears from the debates of last session of Congress that the Senate twice increased the allowance for expenses to \$2,000, but the House refused to concur.

The scientific commissioners to the Paris Exposition of 1867 were paid \$1,000 each, which, taking into consideration the relative distance, cost of living, and other circumstances, was equal to at least \$2,000 at Vienna. In addition, the ten scientific commissioners at Paris had placed at their disposal a fund of \$10,000 on which to draw in making up their reports.

The committee deemed it proper to request the opinion of the Secretary of State upon the merits of the bill. The Secretary replied, in a letter to the committee, that, after careful examination of the subject, he found that the extra services enumerated had been faithfully and patiently performed, and that, in his opinion, the gentleman performing them were entitled to compensation. The amount remaining unexpended from the appropriation is not stated by the Secretary. For fear, however, that contingencies which may yet have to be met will not authorize the payment of the full amount limited in the original bill, viz, \$1,000 apiece, he suggests that it be reduced to \$500, which suggestion the committee have adopted.

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#### APPENDIX A.

[Not of general nature—No. 124.]

AN ACT to authorize the President of the United States to appoint one or more commissioners to represent the Government of the United States at the international exposition of agriculture, industry, and fine arts, to be held at Vienna in eighteen hundred and seventy-three.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he hereby is, authorized, by and with the advice and consent of the Senate, to appoint one or more agents to represent the Government of the United States at the international exposition of agriculture, industry, and fine arts, to be held at Vienna in eighteen hundred and seventy-three: Provided, That such appointments shall not impose on this Government any liability for the expense which they may occasion.*

Approved June 10, 1872.

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#### APPENDIX B.

JOINT RESOLUTION to enable the people of the United States to participate in the advantages of the international exposition to be held at Vienna in eighteen hundred and seventy-three.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to enable the people of the United States to participate in the advantages of the international exhibition of the products of agriculture, manufactures, and fine arts, to be held at Vienna in the year*

eighteen hundred and seventy-three, there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of two hundred thousand dollars, or so much thereof as may be necessary for the purpose herein specified, which sum shall be expended under the direction of the Secretary of State: *Provided*, That the President be authorized to appoint a number of practical artisans, not exceeding eight, and of scientific men not exceeding seven, who shall attend said exhibition and report their doings and observations to him, and whose actual and reasonable expenses, not to exceed one thousand dollars each, shall be paid from such fund; and that the President be further authorized to appoint a number of honorary commissioners, not to exceed one hundred, who shall receive no pay for their expenses or otherwise: *And provided further*, That no person so appointed shall be interested, directly or indirectly, in any article exhibited for competition: *And provided*, That not more than fifty thousand dollars shall be expended for salaries and expenses of all persons receiving appointments to places authorized in this resolution, and not more than five thousand dollars shall be paid for salary and expenses to any one person.

SEC. 2. That the governors of the several States be, and they are hereby, requested to invite the patriotic people of their respective States to assist in the proper representation of the handiwork of our artisans, and the prolific sources of material wealth with which our land is blessed; and to take such further measures as may be necessary to diffuse a knowledge of the proposed exhibition, and to secure to their respective States the advantages which it promises.

SEC. 3. That it shall be the duty of the Secretary of State to transmit to Congress a detailed statement of the expenditures which may have been incurred under the provisions of this resolution.

Approved February 14, 1873.

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#### FORTY-SIXTH CONGRESS, SECOND SESSION.

April 6, 1880.

[Senate Report No. 449.]

Mr. Hill, of Georgia, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (H. R. 270) for the relief of Charles Dougherty, beg leave to report as follows:

Charles Dougherty, a resident of the State of Pennsylvania, was duly appointed consul to Londonderry, Ireland, and received his commission from the State Department, signed by William H. Seward, Secretary of State, on the 17th day of November, 1866. Having filed the necessary bond, which was duly approved, he received the necessary instructions as to his duty as consul, passport, and all the necessary papers pertaining to the office. On the 12th of December following he sailed with his family from the port of New York, and in due time reached Londonderry. On the 23d of November 1866, the Department of State notified the legation at London, requesting an exequatur to be issued for him. After his arrival at Londonderry, and before the exequatur was issued, the Senate rejected the nomination of the said Dougherty.

All the foregoing facts appear from official papers of the State Department. There is no salary attached to the consulate at Londonderry—the only pay of the consul are the fees incident to the appointment. So Mr. Dougherty was informed by the Secretary of State.

He claims allowance for his expenses in going to and returning from Londonderry, loss of time, etc.

There being no default on the part of Mr. Dougherty, the committee are inclined to allow him \$1,000. He was duly appointed and commissioned to the office of consul to Londonderry, and he was ordered by

the Government to enter upon the discharge of the duties pertaining to it. He was appointed during the recess of the Senate, and being ordered upon duty, how was he to anticipate its action? Had the appointment been made while Congress was in session, it would have presented a different case. It would then have been the part of a prudent man to have asked permission of the Secretary of State to await the action of the Senate; but the appointment being made in vacation, and he ordered to enter upon the duties of his office, it would seem to be unjust that he should incur the expense of going to his post, and, because he was rejected on the meeting of Congress, to be without remedy or redress.

Under this view of the case, it is recommended that the bill be reported to the Senate with a request that it pass.

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#### FORTY-SEVENTH CONGRESS, FIRST SESSION.

March 31, 1882.

[Senate Report No. 354.]

Mr. Lapham, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1128) entitled "A bill to authorize the Secretary of State to allow for the expenditures of James Rea, late consul at Belfast, Ireland," having considered the same, submit the following report:

The committee, after a careful examination, based upon the memorial of the petitioner and the letters of the Secretary of State, find that Mr. Rea was appointed the consul to Belfast on the 16th of April, 1869, and that he entered upon the duties of his office on the 3d day of August, 1869, and served until the 11th of August, 1873. That prior to the time of his taking the charge of said office it was customary, with the knowledge of the State Department, for the officers of said consulate to charge fees for the preparation and verification of certain papers at a sum which, in the aggregate, amounted to from \$1,500 to \$2,000 per year in addition to the salary of \$2,000 provided by law. In that way Mr. Rea's predecessor in office received as a compensation for his services, office rent, and clerk hire about \$3,700 per annum. By the act of Congress approved March 3, 1869, the fees aforesaid were abolished, and the net receipts of the office were reduced to the sum of \$2,200 per year. Adopting the consular invoice fees during Mr. Rea's incumbency of the office as a basis of computation, the amount he would have received, but for the prohibition of the statute aforesaid, would have been about the sum of \$4,500. While Mr. Rea was consul as aforesaid no allowance was provided by law for clerk hire.

During the year following his retirement a provision for clerk hire not exceeding \$1,500 per year was provided by law, and the salary of the consul was at the same time increased from \$2,000 to \$2,500 per year.

The duties of the office during Mr. Rea's incumbency required the assistance of one or more clerks, the compensation for which Mr. Rea was obliged to pay out of his own salary.

During Mr. Rea's incumbency he transmitted to the Treasury about 5 per cent more fees and did about 25 per cent more business than

either his predecessor or successor in office, as will appear by the following table:

*Comparative statement of fees, salary, and allowances received at the several consulates therein named, showing the great disproportion between the compensation and duties of Belfast, as compared with any other consulate in the British Isles, during Mr. Rea's incumbency of it.*

## BEFORE MR. REA'S INCUMBENCY.

Consulate.	Salary.	Office rent.	Extra.	Total salary and allowance.	Fees accounted for to the United States.
1868.					
Belfast.....	\$2,000.00	\$200.00	\$1,500.00	\$3,700.00	\$8,285.90
Cork.....	2,000.00	200.00		2,200.00	282.58
Leeds.....	2,000.00	200.00	\$1,000.00	3,200.00	1,167.75

## DURING MR. REA'S INCUMBENCY.

1871.					
Belfast.....	\$2,000.00	\$200.00		\$2,200.00	\$11,995.38
Cork.....	2,000.00	200.00	(*)	2,200.00	1,312.58
Leeds.....	2,000.00	200.00	\$1,000.00	3,200.00	2,279.75
Leith.....	2,500.00	250.00	1,000.00	3,750.00	5,750.55
1872.					
Belfast.....	2,000.00	200.00		2,200.00	12,175.71
Birmingham.....	2,500.00	250.00	1,000.00	3,750.00	12,325.50
Cork.....	2,000.00	200.00		2,200.00	1,365.56
Leeds.....	2,000.00	200.00	1,000.00	3,200.00	2,510.48
Leith.....	2,500.00	250.00	1,000.00	3,750.00	3,169.21
1873.					
Belfast.....	2,000.00	200.00		2,200.00	10,713.73
Birmingham.....	2,500.00	250.00	1,000.00	3,750.00	11,480.02
Cork.....	2,000.00	200.00		2,200.00	1,158.80
Leeds.....	2,000.00	200.00	1,000.00	3,200.00	1,162.49
Leith.....	2,500.00	250.00	1,000.00	3,750.00	3,502.63

## UNDER MR. REA'S SUCCESSOR.

Belfast.....	\$2,500.00	\$500.00	\$1,500.00	\$4,500.00	\$8,993.95
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<sup>1</sup> Made up of a fee of 25 cents allowed to the consul upon each official transaction over and above the legal fee, which was turned into the Treasury; repealed in 1869.

<sup>2</sup> Emolument derived from agencies; this consulate also enjoys the 25-cent fee same as Belfast previous to July, 1869.

<sup>3</sup> From agencies.

<sup>4</sup> Act giving 20 per cent on salary for office rent went into effect July 1, 1873.

<sup>5</sup> Act allowing \$1,500 a year for clerk hire went into effect July 1, 1874.

From this table it will be seen that the salary and allowances of Mr. Rea were \$1,500 less than those of his predecessor and \$2,300 less than his successor received, each doing 25 per cent less work than was performed by Mr. Rea, and also that Mr. Rea's remittances to the Treasury were over \$2,000 per annum greater than those of either his predecessor or successor in office.

The committee annex copies of letters of Mr. Evarts, late Secretary of State, and of the present Secretary of State, addressed to the Committee on the Judiciary of the House of Representatives, in confirmation of the statements herein made:

DEPARTMENT OF STATE,

Washington, January 26, 1880.

The Hon. CHARLES G. WILLIAMS,

Of the Committee on the Judiciary, House of Representatives:

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant. It relates to your letter of 13th instant in reference to the claim of Mr. James Rea,

formerly consul at Belfast, Ireland, and submits certain questions upon which you desire information.

In reply I have to say that Mr. Rea was appointed consul at Belfast on April 16, 1869. By the act of Congress approved March 3, 1869, it was provided that the fee for the verification of invoices should be in full payment for furnishing blank forms of declaration and for making, signing, and sealing the consular certificate; and that any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of the declaration or certificate, should charge or receive any greater fee, should be punishable with fine and imprisonment. Previous to the date when that act took effect it was known to the Department that it was customary with consular officers to charge a small fee for postage and for the preparation of the papers connected with the verification of an invoice, including the declaration and certificate, and in many cases the preparation of the invoices. The usual charge for this service is understood to have been about the equivalent of 25 cents. The ground for this custom, no doubt, was that, except as to the preparation of the consular certificate, the statutes seemed to contemplate that the invoices and the declaration of the shippers thereto shall be brought to the consulate already prepared for the affixing of the consular certificate, and that it is not a part of the consul's duty himself to prepare these papers. This view had been concurred in by the Department, but upon the passage of the act adverted to, a circular instruction was addressed to consular officers, calling attention to its provisions and directing that they should be complied with. Mr. Rea took charge of the consulate on the 3d of August, 1869, and delivered the office to his successor on the 11th of August, 1873. Taking the consular invoice fees during Mr. Rea's incumbency as a basis of computation, the amount of the income to him from the additional 25 cents would, in the absence of the prohibitory statute, have been about \$4,500 during the period.

While Mr. Rea was consul at Belfast no allowance was provided for clerk hire. Provision, however, was made by Congress in the year following his retirement, to an amount not exceeding \$1,500 a year, of which \$1,200 was allowed by the Department. The salary of the consulate was at the same time also increased from \$2,000 to \$2,500 a year, and since that time an allowance of \$300 a year has been provided by statute for the expense of shipping seamen at the consulate. None of these allowances were provided for while Mr. Rea held the office.

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

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DEPARTMENT OF STATE,  
Washington, February 9, 1880.

The Hon. CHARLES G. WILLIAMS,

*Of the Committee on the Judiciary, House of Representatives.*

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, in further reference to the claim of Mr. James Rea, late consul at Belfast, for relief, now before the Judiciary Committee. In reply I have to say that it is believed that the letter addressed to you, under date of the 26th ultimo, on this subject contained the views of the Department on the facts in the case of Mr. Rea. It appeared therefrom that in consequence of the act of Congress, passed shortly before Mr. Rea's appointment, he was prohibited from receiving a part of what had theretofore been the compensation of the office, and that the allowance for clerkship and the increased salary of the consulate, both of which have been subsequently made, on the recommendation of the Department, were not available during Mr. Rea's incumbency. It was stated that by the Department's computation the difference in compensation amounted at least to \$4,500.

These facts were submitted to you for the information of the committee, in order that such equities as the case may have might receive such attention as the committee should think proper to give them.

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

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DEPARTMENT OF STATE,  
Washington, February 24, 1882.

The Hon. HENRY W. LORD,

*House of Representatives.*

SIR: I have the honor to return herein the papers relative to the claim of James Rea, late consul at Belfast, which you left at the Department with a request for copies of such letters as had been addressed to the committee of Congress having the matter under consideration by my predecessors on the subject. In compliance with this request I send you inclosed copies of the letters addressed to Hon. Charles G. Williams, of the Committee on the Judiciary, dated January 26, 1880, and February 9, 1880.

To the statements made in these letters I desire to add that, although there has been no material increase in the business of the office since Mr. Rea's incumbency, the salary was immediately after his retirement increased from \$2,000 to \$2,500; \$1,200 was allowed for clerk hire, and \$300 for the expense of shipping seamen; aggregating \$4,000 for the salary and expenses of the office, while Mr. Rea was allowed but \$2,000.

From a consideration of all the facts bearing on the matter I am inclined to the belief that the claim of Mr. Rea is a just one, and as such I recommend its favorable consideration by the committee having it in charge.

I have the honor to be, sir, your obedient servant,

FREDERICK T. FRELINGHUYSEN.

Your committee further report that in the latter part of the year 1869 the German bark *Oberberger-Meister von Winter*, Capt. Carl Richard Schmidt, master, arrived at Belfast with a crew of eight American seamen, citizens of the United States. These seamen had been hired by Captain Schmidt in New York for the round trip to Belfast and back. Upon arriving in Belfast Captain Schmidt repudiated his contract with them, forcibly put them off his ship, and turned them adrift in the streets without money or the chance of reshipment, there being a plethora of unemployed men in Belfast and no American vessel in port.

In this condition these seamen applied to the United States consul for assistance. The vessel being a German vessel, and the master German, the consul had no jurisdiction over them, but believing that the German consul would take jurisdiction and see that the seamen were protected in their rights, Mr. Rea laid the case before him. After frequent and persistent efforts to obtain redress for them from the German consul without success, Mr. Rea was advised and did bring the case before the Irish court of admiralty in Dublin, which court dismissed the suit on a demurrer to its jurisdiction on the part of the German consul, and referred it back to him for adjudication. The court of admiralty, when all the parties are foreigners, will entertain jurisdiction or dismiss the case in its discretion.

The expenses paid by Mr. Rea for the board, lodging, and the necessary disbursements of the admiralty proceedings amounted in the aggregate to £120 9s. 4d.

The laws of the United States do not provide for the payment by a consul of expenditures of this kind, however equitable and just they may be. Yet an American consul who failed to do all in his power to protect and redress American seamen, although shipped in a foreign vessel, when wrongfully discharged and left destitute in a foreign port, should receive the censure of the Government.

This is one of the items of credit disallowed in the accounts of said Rea, and the United States has brought suit against him and his sureties on his official bond to recover an alleged balance of \$4,434, which suit is now pending under a temporary stay of proceedings by order of the Attorney-General to allow the memorialist to apply to Congress for such relief as may be just.

The committee, after a thorough examination of the papers submitted to them, are of the opinion that while Mr. Rea has no defense to the action now pending which a court of law would be authorized to receive and allow, yet there are items in his accounts of expenditures made by him in discharge of his official duties which should be allowed according to principles of justice and equity, which would greatly reduce, if not entirely discharge, the balance claimed against him.

Your committee therefore recommend the passage of the accompanying bill.

[See p. 780.]

April 25, 1882.

[Senate Report No. 486.]

Mr. Johnston, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 137) for the relief of William Schuchardt, United States commercial agent at Piedras Negras, Mexico, have considered the same, and respectfully report:

Mr. Schuchardt was formerly commercial agent and is now vice-consul of the United States at Piedras Negras, Mexico. He asks to be paid the sum of \$750 for services in procuring testimony, and rendered by him in 1871.

Claims were presented against the United States amounting to \$11,000,000, which were reduced in settlement to \$50,000. Mr. Schuchardt's services were believed to be important by the Government, and in May, 1880, the late Secretary of State wrote to this committee that he is "of the opinion that the charge of \$750 is reasonable and quite moderate."

The present Secretary of State, Mr. Frelinghuysen, quoting the communication above referred to, says:

I agree entirely with my predecessor that "the charge of \$750 is reasonable and quite moderate," and, as the amount is justly due, I sincerely trust it may be paid.

Your committee therefore report the accompanying bill, and recommend its passage.

#### FORTY-SEVENTH CONGRESS, SECOND SESSION.

January 5, 1883.

[Senate Report No. 913.]

Mr. Windom, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (H. R. 2638) for the relief of J. J. Coffey and Rebecca S. Lewis, mother of Burge Rawle Lewis, have had the same under consideration, and respectfully submit the following report, made to the House of Representatives, in which the committee concur:

J. J. Coffey and Burge Rawle Lewis, both clerks in the United States consulate-general at Shanghai, China, were summoned home in order to testify before the Congressional committee investigating into the conduct of the former consul-general, George F. Seward, returning to their posts afterwards by the direction of the Secretary of State. They were not permitted to perform their clerical duties, however, until April, 1880, when they were reinstated. B. R. Lewis has since died, and the petitioner praying for relief, Mrs. R. S. Lewis, is his mother. They ask for compensation for such time as they were not allowed to return to duty, in the sum of \$2,000 each.

Their statements, as set forth in their petition, are substantiated by the following letter of the State Department:

DEPARTMENT OF STATE,  
*Washington, March 17, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter, with inclosures, dated the 24th ultimo, and relating to the case of Messrs. Lewis and Coffey.

In reply I have the honor to inform you that the facts set forth in the petition inclosed in your letter (and herewith returned) are corroborated by the records

in this Department so far as they are statements of fact and not expressions of opinion; and further, that the petitioners received no salary during the time they were unemployed and awaiting reinstatement.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. PETER V. DEUSTER,

*Of the Committee on Foreign Affairs, House of Representatives.*

In view of the facts as given, the committee deem the claim a just one, and recommend the passage of the bill.

## FORTY-EIGHTH CONGRESS, FIRST SESSION.

March 6, 1884.

[Senate Report No. 278.]

Mr. Miller, of California, from the Committee on Foreign Relations, submitted the following report:

An examination of this case shows that there is no precedent for an allowance of salary after death of a consul, although such allowances have been frequently made by Congress to officers in the diplomatic service. The report of the Fifth Auditor shows that Mr. Moore drew his salary as consul at Callao from October 29, 1882, to July 11, 1883, at the rate of \$3,500 per annum, amounting to \$2,463.32. To pay for the unexpired portion of the year, as provided for by the resolution, it would require \$1,036.68.

The consular and diplomatic appropriation bill of last session made provision for the removal to the United States of the remains of consular and diplomatic officers who have died abroad.

The present law allows the widow for the time necessary for transit, forty days, the sum of \$380.44, which she will receive without this resolution.

The wisdom and propriety of making a precedent in the case of a consul such as this joint resolution would make is doubted, and the committee therefore recommend that the resolution be indefinitely postponed.

April 1, 1884.

[Senate Report No. 411.]

Mr. Wilson, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred a joint resolution (S. Res. 14) for the relief of Mrs. Jane Venable, reports the same to the Senate with an amendment, recommending the adoption of the amendment and the passage of the joint resolution.

It appears in this case that William E. Venable, of Tennessee, was commissioned as minister resident of the United States to the Republic of Guatemala March 14, 1857; that he started for his post of official duty in the month of June following; that he arrived at Guatemala on August 2, 1857, and on the next day addressed a note to the authorities of the Government to which he was accredited, signifying his desire to be presented to the President of the Republic; that the ceremony of presentation never transpired, as he was taken sick before it could take place, and died on the 22d day of August, 1857, leaving

as his widow Mrs. Jane Venable, for whose relief the joint resolution herewith reported to the Senate was introduced.

In an affidavit submitted to the committee Mrs. Venable, in relating the facts concerning her husband's death and the circumstances of herself and family, says:

That his death was caused by the change of climate in midsummer, and the fatigue and exposure incident to his journey; that she has knowledge of but few of the particulars of his sickness and death, and can only state that his sickness was contracted and his death ensued while engaged in the performance of his public duties; that none of his effects were returned to her except his gold watch, which is still [in] her family; that he was buried at the seat of government in Guatemala, and that all the money he had with him was used in his burial expenses; that at the time of his appointment he was engaged in a large and lucrative practice of law; that he borrowed money for his outfit, and executed a mortgage upon his property to secure its payment; that by reason of this mortgage debt his estate proved insolvent, and the money collected from the Government by his administrator was applied to his debts, and no part of it ever came to the hands of affiant or her family; that all she ever had of his estate was a dower interest, worth less than \$1,000; that at the death of her husband they had six children, five of them girls, and the eldest aged about 15 years; that by her unassisted efforts she has reared and educated her family; that she is now 64 years of age, and two of her children are mainly dependent upon her for support, and that she is entirely without means, save the small dower interest before stated.

The salary of minister resident to Guatemala was \$7,500 per annum. The total amount received by Mr. Venable and by the administrator of his estate, as appears from a communication of the Secretary of State submitted to the committee, was \$1,863.13, which leaves, as the balance of one year's salary, \$5,636.87, which amount the committee, in view of the precedents set in several like cases of death of persons in the diplomatic service of the United States, recommend be allowed to Mrs. Venable.

The committee therefore report an amendment to the joint resolution, reducing the amount stated therein to the said sum of \$5,636.87, and recommend the adoption of the same, and the passage of the joint resolution.

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May 22, 1884.

[Senate Report No. 566.]

Mr. Miller, of California, from the Committee on Foreign Relations, submitted the following report:

In proposing an amendment to the consular and diplomatic appropriation bill, making an appropriation of \$1,054.94 to compensate Mr. John W. Foster, United States minister at Madrid, for time spent under the direction of the President in excess of the ordinary requirement, and an appropriation of \$82.88 to compensate Mr. Wickham Hoffman, United States minister at Copenhagen, for extra official services which he was required by the President to perform, the Committee on Foreign Relations beg leave to submit the following extract from a letter from the Department of State to this committee, dated the 21st of March, 1884:

I have the honor to request that provision be made to compensate Mr. John W. Foster, United States minister at Madrid, and Mr. Wickham Hoffman, United States minister at Copenhagen, for extra official services which they were required by the President to perform.

The facts in these cases are as follows:

Mr. Foster was entitled by law to compensation for only thirty days while receiving instructions. The importance of his mission and the intricate nature of the

many questions then pending between Spain and the United States necessarily required more than a study of thirty days for comprehension, and the President consequently directed Mr. Foster to continue his study to completion.

The President, moreover, required Mr. Foster to attend General Diaz, of Mexico, who was then the nation's guest, Mr. Foster being preeminently fitted for this service by reason of his years of former association with the Mexican President while United States minister to Mexico.

These two services fully occupied Mr. Foster for a period of thirty-two days beyond the time allowed him for receiving his instructions.

His compensation for that period should, at the rate of his salary, be \$1,054.94.

Mr. Hoffman's case is entirely analogous. In March last, soon after his appointment as minister, he was directed by the President to accompany the Madagascar envoys from New York to Washington, and care for them here.

He was on that duty six days; otherwise he would have left for his post at the expiration of the thirty days allowed him by law for the reception of instructions.

His compensation for that period should, at the rate of his salary, be \$82.88.

The Government is justly indebted for these two sums, which amount to \$1,137.82, and hence I request that early and effective action be taken for their payment.

#### FORTY-NINTH CONGRESS, FIRST SESSION.

[See p. 790.]

February 11, 1886.

[Senate Report No. 105.]

Mr. Saulsbury, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 147) to reimburse George S. Fisher for losses sustained by fire in Japan, November 26, 1866, report as follows:

George S. Fisher was consul at Japan from December, 1861, to ———, 1867, and resided in the city of Kanagawa in a property which he had leased as a residence until June 1, 1863, when he removed, at the request of the governor of that city, to Yokohama, some short distance from Kanagawa. In an extensive fire in Yokohama in 1866 the residence of Mr. Fisher was destroyed and his law library and other property burned. He estimates his loss at over \$15,000, and claims that it resulted from his forced removal from Kanagawa at the instance of the governor of that city, and the bill provides for the payment to Mr. Fisher of that amount out of any part of the Japanese indemnity fund remaining in the Treasury of the United States.

From an examination of the papers on file in the State Department it appears that in 1863 serious disturbances existed in Japan, which the governor of Kanagawa was apprehensive might extend to that city and endanger the safety of the American consul and his family, and for that reason he urged his removal to Yokohama, where he supposed he would be more secure.

There is nothing to show that the governor was not sincere in the statements he made which induced Mr. Fisher's removal from Kanagawa to Yokohama. The fire in the latter city was a casualty for which no blame attaches to the Japanese authorities, and for the consequences of which that Government can in nowise be held responsible. Besides, if Mr. Fisher was entitled to indemnity for his loss, there are no funds in the Treasury of the United States belonging to the Japanese Government out of which such indemnity could be paid, and the committee report the bill back with a recommendation that it be indefinitely postponed.

[See p. 776.]

**March 3, 1886.**

[Senate Report No. 188.]

Mr. Brown, from the Committee on Foreign Relations, submitted the following report:

This is a claim presented in behalf of William Schuchardt, United States commercial agent at Piedras Negras, Mexico, for the sum of \$750, which he claims as compensation for services in obtaining testimony for the use of the United States and Mexican Claims Commission appointed under the convention of July 4, 1860.

It was approved by the Secretary of State in 1880, and again by Mr. Frelinghuysen in 1882, as a just claim. A favorable report was made on it in the House of Representatives in the Forty-fifth Congress by Mr. Bridges, as chairman of the Committee on Foreign Affairs, and in the Forty-sixth Congress a similar report was made by Mr. Cox, from the Committee on Foreign Affairs, and in the Forty-seventh Congress a favorable report was made by Mr. Johnston, from the Committee on Foreign Relations of the Senate, and the bill has passed in both Houses, but at different sessions.

Your committee report back the bill favorably.

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**March 4, 1886.**

[Senate Report No. 194.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations having been advised by the Department of State that there is a balance due on salary account for the year 1882, and properly payable, to the legal representatives of Henry Highland Garnet, deceased, late minister resident and consul-general to Liberia, which amount was estimated for by the Secretary of the Treasury January 29, 1885 (see House Ex. Doc. No. 153, Forty-eighth Congress, second session), in the sum of \$445.40, but which has never yet been appropriated by Congress, beg leave to submit herewith an amendment to the bill making appropriations to supply deficiencies, etc., providing for the payment of the said amount, with recommendation that the same be referred, together with letter of the Secretary of State concerning this matter, to the Committee on Appropriations for consideration, and that it be adopted.

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DEPARTMENT OF STATE,  
*Washington, February 26, 1886.*

SIR: I have the honor to bring to the attention of your committee the following statement in regard to a balance of \$445.40 due to the estate of Henry Highland Garnet, late deceased minister resident and consul-general of the United States to Liberia, on account of salary for 1882.

In a letter of October 14, 1884, to the First Comptroller of the Treasury, this Department asked that that amount be included in the statement of deficiencies to be made to Congress by the Secretary of the Treasury in December of that year, to enable the Secretary of State to pay that sum, which was borne on the books of the Treasury to the credit of the late minister, to Mr. Garnet's legal representative, who had made application therefor.

This action was accordingly taken by the Secretary of the Treasury, but up to the present time Congress has failed to make provision to satisfy the claim.

In a letter of June 4, 1885, to the Assistant Secretary of State, Mr. M. J. Durham, First Comptroller, referred to the failure of Congress to appropriate the necessary amount, and asked whether it was desirable to call the attention of the present session of Congress to the matter.

Reply was made in the affirmative, but, according to a letter from the First Comptroller of the Treasury of the 23d instant, the Secretary of the Treasury declines to report the claim to Congress because of its having been once called to the knowledge of that body. The matter is accordingly referred to me for such action as this Department thinks proper under the circumstances.

I am, therefore, of the opinion that the sum of \$445.40, due as previously stated, should be immediately appropriated to enable this Department to discharge an outstanding obligation to a deceased diplomatic officer of this Government abroad, whose accounts have been finally audited and closed.

In this view of the case, the Department earnestly hopes that the cooperation of your committee may be promptly extended; and, for its further information, reference is made to House Executive Document No. 153, Forty-eighth Congress, second session, covering a letter from the Secretary of the Treasury dated January 25, 1885, touching Mr. Garnet's claim for deficiency.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. JOHN F. MILLER,

*Chairman Committee on Foreign Relations, United States Senate.*

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March 17, 1886.

[Senate Report No. 234.]

Mr. Evarts, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (H. R. 1008) for the relief of Victor Beauboucher, having considered the same, beg leave to report it back with the recommendation that it pass, submitting herewith the report made by the Committee on Foreign Affairs (House Report No. 28, Forty-ninth Congress, first session), in which they concur, and which they ask may be reprinted and made a part of this report.

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[House Report No. 28, Forty-ninth Congress, first session.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 1008) for the relief of Victor Beauboucher, beg leave respectfully to report:

Victor Beauboucher was, at the time concerned, the consul of the United States at Jerusalem. He received the appointment from President Lincoln, although still a French subject, in recognition of gallant services in the Union Army. In that cause he had lost one of his legs.

In the winter of 1866-67 the colony of misguided Americans who had been led to settle at Jaffa, under the fanatic lead of the Rev. G. J. Adams, were brought to the verge of destitution. They had neither food nor money, nor resources to procure either. Under these circumstances, Beauboucher came to their rescue and made constant trips between Jerusalem and Jaffa, and rendered all the aid he could. He made advances to relieve their immediate necessities and to aid their escape from Palestine to the amount of \$3,618.80 in gold. He asks the Government to repay this without interest.

His application, indorsed by Secretary Fish, was transmitted to Senator Sumner, then chairman of the Committee on Foreign Relations. A bill introduced by Mr. Sumner, granting the relief sought, was passed in the Senate. It seems never to have been pushed in the House. Beauboucher's infirmities and health and possible absence preventing him from giving personal supervision to his case.

The same causes, possibly aided by a feeling of discouragement not unnatural to his race or to anyone else under the circumstances, seems to account for subsequent delay in its prosecution. The committee find in this delay nothing to invalidate their faith in the justice of Beauboucher's demand, which at the time received

the indorsement of the American minister at Constantinople, Mr. E. Joy Morris; Governor Perham, of Maine, and Mr. Israel Washburn, collector of the port of Portland, who seem to have had a personal acquaintance with and regard for the claimant.

The unhappy colonists, to the number of forty or more, mainly Maine folk, declared their appreciation and gratitude for his services in a letter to him, now in the files of the State Department.

And, as before noted, the Department itself recommended some appropriation to reimburse him for his outlays. Under these circumstances, the committee have no hesitancy in recommending the passage of the accompanying bill, which leaves the adjustment of the amount, under fair limits, and all other details to the discretion of the Secretary of State.

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March 17, 1886.

[Senate Report No. 238.]

Mr. Sherman, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred S. Res. 16, having considered the same, beg leave to report in lieu thereof a bill for the relief of Mrs. Lizzie Maynadier Phelps, widow of Capt. Seth Ledyard Phelps, late minister of the United States to Peru, which they have the honor to recommend may be passed by the Senate.

The letter of the Secretary of State dated January 11, 1886, and addressed to the acting chairman of the committee, with reference to the subject-matter of the bill, is herewith presented, with request that it be printed with this report.

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DEPARTMENT OF STATE,  
*Washington, January 11, 1886.*

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, accompanied by a copy of Senate resolution No. 16, Forty-ninth Congress, first session, for the relief of Mrs. Lizzie Maynadier Phelps, widow of Seth Ledyard Phelps, late envoy extraordinary and minister plenipotentiary of the United States to Peru.

Captain Phelps died at Lima, June 24, 1885. He was commissioned June 18, 1883, as such minister. His salary has been adjusted up to the date of his death.

While upon the subject of the Senate's resolution, I beg to submit for the consideration of your committee a few observations in connection therewith, without, however, being understood as intending in any manner to influence the committee's report or the Senate's later action.

I find, upon an inspection of the Department's records covering the period of Captain Phelps's official services, that they have been discharged with a due regard to the honor, dignity, and interest of the Government, and with commendable fidelity and ability. Besides his duties at his post, which, during the late revolutionary operations of the contending factions in Peru, were exceedingly onerous and difficult, it appears that my immediate predecessor, relying upon the tact and judgment of Captain Phelps, ordered him from Lima on a temporary and confidential mission to Central America. His delicate and important duties there were likewise discharged in such a manner as to secure the entire approval of Mr. Frelinghuysen. Upon the completion of this service Captain Phelps returned to Lima, entered actively upon the performance of his official duties there, and died, as previously stated, while in the Government service.

A few precedents may be here cited to show the action of Congress in similar instances where diplomatic officers have died abroad in the service.

The appropriation act approved March 3, 1879, gave to Mrs. Taylor, widow of Bayard Taylor, who died while minister to Germany, the sum of \$7,000 to compensate his estate for the extraordinary expenses and losses incurred by it in consequence of his death so soon after reaching his post.

The joint resolution approved July 28, 1882, gave to Mrs. Hurlbut, widow of

General Hurlbut (Captain Phelps's immediate predecessor), General Hurlbut having died while minister to Peru, one year's salary and legal allowances, after necessary deductions of salary paid.

The joint resolution also approved July 28, 1882, gave to Mrs. Kilpatrick, widow of General Kilpatrick, who died while minister to Chile, one year's salary and legal allowances, after making proper salary deductions.

The joint resolution approved August 1, 1882, gave to Mrs. Garnet, widow of the Rev. Henry Highland Garnet, who died while minister to Liberia, one year's salary and legal allowances, after deducting the amount received up to his death. Mr. Garnet had only been in Liberia a few weeks.

The deficiency bill approved March 3, 1883, gave to Mrs. Marsh, widow of George P. Marsh, esq., who died while minister to Italy, the balance of one year's salary reckoned from June 23, 1882.

The act approved December 23, 1884, gave to Mrs. Jane Venable, widow of William E. Venable, esq., who died as minister to Guatemala, the sum of \$5,636.87, being the balance of one year's salary. In this case, Mr. Venable was commissioned March 14, 1857, and died at Guatemala, August 22 of that year, before presenting his credentials. Consequently the action of Congress dates twenty-seven years after the minister's death.

The deficiency bill approved March 3, 1885, gave to Mrs. Wing, widow of E. Rumsey Wing, esq., who died while minister to Ecuador, and to Mrs. Hunt, widow of William H. Hunt, esq., who died while minister to Russia, a sum equal to six months' salary in each case. Mr. Wing was commissioned minister-resident November 16, 1869. Shortly afterwards, however, Congress discontinued the mission to Ecuador.

Under all the circumstances, therefore, I am inclined to the opinion, which, of course, is offered with a due regard to the rights of the committee, that the proposed action of Congress is one both just and worthy of bestowal.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. JOHN SHERMAN,  
*Acting Chairman Committee on Foreign Relations, U. S. Senate.*

## FIFTIETH CONGRESS, FIRST SESSION.

May 23, 1888.

[Senate Report No. 1360.]

Mr. Dolph, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (H. R. 474) for the relief of General G. Cluserét, having had the same under consideration, respectfully report:

The committee adopt the report made by Mr. Russell, from the Committee on Foreign Affairs of the House, at the present session of Congress, which is as follows:

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 474) for the relief of General G. Cluserét, make the following report, to wit:

In obedience to Department circular of May 23, 1880, to the United States consul-general at Constantinople, the claimant was employed by said consul-general for the collection of statistics and the making of a report on "cotton fabrics and yarns imported into Turkey."

These statistics, owing to the condition of Turkey at the time, were very difficult to procure.

The consul-general in his dispatch of August 24, 1880, acknowledges his obligation to the American-Eastern Agency, represented by General Cluserét, who devoted much time and labor to the subject. The consul recognized the report to be as full and clear as possible.

Owing to the difficulty in obtaining the necessary data the fund at the command of the consul-general was not sufficient to meet the expenses incurred.

No payment was ever made by Mr. Heap, nor by the Government, to General Cluserét for his work.

The report of General Cluserét is to be found in the Consular Report No. 12, for October, 1881, entitled "Cotton-Goods Trade of the World, and the share of the United States therein."

Although there was no special contract made with General Cluserét, the Department of State thinks that it would be hardly just that he should have incurred any expense in obtaining valuable information for an officer of the Government without having the amount thereof, at least, returned to him.

Owing to the failure of the Department to grant the consul-general permission to apply the fund to his credit for such work, General Cluserét failed to obtain any compensation.

Your committee think General Cluserét has an equitable claim upon the Government for a reasonable sum, and they report a bill for \$500, which is simply the amount he expended, not counting his time and labor in preparing the information.

This view of the case is taken by the Department of State in the paper hereto annexed.

Perhaps General Cluserét would not have made this request were he not impoverished at the end of a long and honorable career as a soldier, during which he served in our own Army. The committee also refer to the statements of General Cluserét for the details of his service.

Application was made by Hon. Horace Maynard, while minister to Turkey, for compensation, and also through the Hon. Roscoe Conkling, Senator from New York, but nothing was ever done.

The value of this work will be appreciated when it is known that General Cluserét is an accomplished writer in many languages, and has fully earned the small sum which, in his old age and indigence, has been appropriated by the bill.

The correspondence is hereto appended.

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DEPARTMENT OF STATE,  
*Washington, December 13, 1887.*

MY DEAR SIR: In reply to your letter of the 4th instant, touching the claim of Col. G. Cluserét, who rendered valuable assistance to Mr. Heap in connection with the Department's circular of May 23, 1880, I herewith transmit copies of the following correspondence upon the subject: (1) Mr. Cox to Mr. Bayard, No. 105, January 19, 1886, with inclosure; (2) Mr. Bayard to Mr. Cox, No. 86, of February 19, 1886; and (3) Mr. Bayard to Mr. Belmont, February 19, 1886, with inclosure, adding that the letter to Mr. Belmont covers a proposed bill appropriating \$500 for the relief of General Cluserét.

I am, my dear sir, very respectfully, yours,

T. F. BAYARD.

Hon. S. S. Cox, M. C.,  
*House of Representatives.*

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[Inclosure 105.]

CONSTANTINOPLE, *January 17, 1886.*

DEAR SIR: When Mr. Maynard was United States plenipotentiary minister here I forwarded through Mr. Heap a memoir and collection of samples of every cotton goods employed in the Turkish Empire.

That work was very difficult, long, and expensive. I was obliged to correspond with ever villager from Persia to Herzegovina, give bakshish for every information and pay for every sample several hundred in number. You know that in this country nothing can be accomplished without bakshish. For each sample I was obliged to pay 1 yard and transportation.

I completed three collections and memoirs including every information, not only on cotton trade, but also its manufacturing. I added statistics of import and export, etc. One was directed to the State Department, one to the New York Chamber of Commerce, and the third to that of Boston or Philadelphia, I don't recollect exactly which one. These last two were delivered by our friend, Colonel Dugane, of New York.

This work was undertaken in order to answer a questionnaire by the State Department to Mr. Heap, who did not think possible to give it a satisfactory solution. So in point of fact, having volunteered my services, without them being requested officially, I have no legal right to claim from the Treasury the refunding of my expenses.

Still, I have spent, besides my time and labor, nearly \$500. Twice Mr. Maynard applied to the State Department for some compensation; so did R. Conkling, of New York, but to no purpose. If you, sir, through Congress, can obtain the refunding of a part, whatever it might be, of my disbursing, you will oblige me very much. Although, perhaps, not strictly correct in a financial point of view, I think that transaction perfectly equitable, for my work has been utilized not only by the State Department, but by the chambers of commerce.

Very respectfully,

Gen. G. CLUSERÉT.

Hon. S. S. Cox,

*Plenipotentiary Minister of the United States of America.*

No. 86.]

DEPARTMENT OF STATE,  
*Washington, February 19, 1886.*

SIR: I have received your No. 105 of the 19th ultimo relative to the equitable claim of Gen. G. Cluserét in connection with his service to Mr. Heap, consul-general at Constantinople, in carrying out a circular instruction of this Department of May 23, 1880.

At present I can only express the Department's regret that General Cluserét should not have been paid at the time, and that it has no appropriation available at this late date from which to recompense him for the valuable information furnished. In order, if possible, to compensate General Cluserét for his services, I have inclosed to the Hon. Perry Belmont, chairman of the Committee on Foreign Affairs of the House of Representatives, a copy of your dispatch, with a letter of explanation, a copy of which I herewith transmit, recommending the appropriation of \$500, to be paid to General Cluserét.

I am, sir, your obedient servant,

T. F. BAYARD.

SAMUEL S. COX,

*Constantinople.*

No. 105.]

UNITED STATES LEGATION,  
*Constantinople, January 19, 1886.*

SIR: I knew a soldier in our civil war named General Cluserét. He lives here now, after military service with the Turks. He is a writer and economist, as well as soldier. He is now old and destitute. I called to see him at his room in the suburbs of this city. I found him endeavoring to get some warmth over a mangal. His condition excited sympathy.

He has an equitable claim for services rendered in the preparation of certain statistics, in response to a call of the Department. I requested him to put it on paper. I inclose you a reply of his letter, with a view to have you regard it, even at this late day, in a favorable light, and with the further object of an appropriation and payment, if you think it possible.

I am endeavoring to aid him personally by purchasing some of his pictures, but he is, or should be, an object of justice as well as benevolence.

I have the honor to be, sir, your obedient servant,

S. S. COX.

Hon. T. F. BAYARD,

*Secretary of State, Washington, D. C.*

DEPARTMENT OF STATE,  
*Washington, February 19, 1886.*

SIR: I have the honor to inclose for the consideration of your committee a copy of a dispatch from Mr. S. S. Cox, the minister of the United States at Constantinople, No. 105, of the 19th ultimo, relative to the petition of Gen. G. Cluserét for relief in connection with his services to Mr. G. H. Heap, consul-general of the United States at Constantinople, in carrying out a circular instruction of this Department in 1880.

General Cluserét's petition is correct as to the character of the information furnished, but I have been unable to find any record in the Department of his claim having been previously brought to its attention as he asserts.

The facts appear to be these:

Mr. Heap with his dispatch No. 96, of August 24, 1880, furnished a report on cotton fabrics and yarns imported into Turkey, in obedience to the Department's circular of May 23, 1880.

A portion of his dispatch is as follows:

"For the information contained in this report I am chiefly indebted to the 'American Eastern Agency,' represented by General Cluserét, who has devoted much time and labor on the subject, and I believe that the answers to the subject will be found as full and clear as possible."

Mr. Heap also asked permission to expend the fund at his command for obtaining information for consular reports to meet the expenses incurred in making this one, after explaining how very difficult it was to obtain the necessary data. His dispatch does not say that he intended to recompense General Cluserét for his trouble or give any idea of how the money was to be applied.

At any rate no special acknowledgment was ever made of Mr. Heap's dispatch, although the report, a very full and valuable one, was published in the consular report No. 12, October, 1881, entitled "Cotton-goods trade of the world, and the share of the United States therein."

It is apparent from his petition that General Cluserét did not, when furnishing the information, expect to be compensated. Even now he says, "in point of fact, having volunteered my services without their being requested officially, I have no legal right to claim from the Treasury the refunding of my expenses."

It seems hardly just, however, that General Cluserét should have incurred any expense in obtaining this valuable information for an officer of this Government without having the amount thereof at least returned to him. But the failure of the Department to grant Mr. Heap permission to apply the fund to his credit for such work to the best advantage necessarily prevented him from offering to compensate General Cluserét, even if it was his intention to do so.

Under these circumstances the Department is disposed to agree with Mr. Cox that General Cluserét has an equitable claim upon this Government for the services rendered to it as explained, and entertains the hope that some measure for the petitioner's relief at this late date, to the extent, at least, of the \$500 which he expended, besides his time and labor in preparing the information, may find equal favor with your committee and secure its cooperation in obtaining the passage of the necessary bill for General Cluserét's relief.

A draught of a bill to meet the case is herewith transmitted for the consideration of your committee, and it is respectfully suggested that you authorize some member thereof to introduce it in the House, should the judgment of the committee be favorably disposed in the premises.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. PERRY BELMONT,

*Chairman Committee on Foreign Affairs, House of Representatives.*

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May 23, 1888.

[Senate Report No. 1362.]

Mr. Dolph, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (H. R. 7255) for the relief of A. B. Tyan, having had the same under consideration, respectfully report:

The committee adopt the report made by Mr. Phelps from the Committee on Foreign Affairs of the House at the present session of Congress, which is as follows:

In the winter of 1866-67, the colony of misguided Americans who had been led to settle at Jaffa, under the fanatic lead of the Rev. G. J. Adams, were brought to the verge of destitution. They had neither food nor money nor resources to procure either. Under these circumstances the colonists naturally turned to the consul of the United States at Jerusalem. This was Victor Beauboucher. Beauboucher came promptly to their relief, made constant trips between Jerusalem and Jaffa, and in the end found he had advanced to relieve their necessities and to aid their escape from Palestine \$3,618.80 in gold.

Bauboucher applied promptly to our Government for the repayment of this sum.

His application, indorsed by Secretary Fish, was transmitted to Senator Sumner, then chairman of the Committee on Foreign Relations. A bill, introduced by

Mr. Sumner, granting the relief sought, was passed in the Senate. It seems never to have been pushed in the House. Beauboucher's infirmities and health and possible absence preventing him from giving personal supervision to his case.

The same causes, possibly aided by a feeling of discouragement not unnatural to his race or to anyone else under the circumstances, seems to account for subsequent delay in its prosecution. The committee find in this delay nothing to invalidate their faith in the justice of Beauboucher's demand, which at the time received the indorsement of the American minister at Constantinople, Mr. E. Joy Morris, Governor Perham, of Maine, and Mr. Israel Washburn, collector of the port of Portland, who seem to have had a personal acquaintance with and regard for the claimant.

The unhappy colonists, to the number of forty or more, mainly Maine folk, declared their appreciation and gratitude for his services in a letter to him, now in the files of the State Department.

In the Forty-ninth Congress a bill was passed authorizing the Secretary of the Treasury to audit Beauboucher's expenditures, and to determine what allowance, if any, should be made to him on account of these advances. The Department of State, having audited the expenditures as requested, find that this sum of \$3,618.80 was expended as claimed, but that the money, though expended by Beauboucher, was patriotically furnished by the banking house of A. B. Tyán, then and now, as we are informed, doing business in Jaffa.

The Secretary of State, in a letter addressed to the chairman of the committee, asks "that the act be so amended as to permit the payment to the proper person of the money already appropriated."

In accordance with these facts and the request of the Department the committee recommend the passage of the accompanying bill.

Your committee recommend the passage of the bill.

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[See pp. 790, 805.]

May 23, 1888.

[Senate Report No. 1363.]

Mr. Payne, from the Committee on Foreign Relations, submitted the following report:

Mr. De Leon was United States consul at Egypt from May, 1853, to March, 1861, a period of nearly eight years. He claims that in addition to his regular duties as consul he performed judicial functions, and asks compensation therefor. He cites as a precedent the case of Daniel McCauley, who was his predecessor in office, and to whose widow Congress made the same allowance now claimed by him, and in addition relies upon the treaty with Turkey, ratified in 1830, the treaty with China, ratified in 1844, and the act of Congress of August 11, 1848, making provision for the execution of these treaties.

Your committee do not attach much weight to the case of McCauley. Courts, of course, must, as a general rule, be guided in a great degree by precedents and decisions of competent tribunals, where the same question once decided again arises. But there is no such rule and no such reason for it in legislative proceedings. There each case ought to depend upon its merits and upon the law governing it. Mr. De Leon's claim must, therefore, be determined by the question of fact as to whether he rendered the services, and upon the construction of the treaties and law to which reference is above made. For evidence in his behalf Mr. De Leon files two letters—one from Mr. Outrey, now the French minister to the United States, who was at one time connected with the consular service in Egypt, and one from Mr. W. C. Prune—which, however, are very general in their statements. No doubt Mr. De Leon was a good officer and performed his duties with ability and fidelity, but your committee are of opinion that under the provisions of the treaties and law he is not entitled to the compensation now claimed.

And in this connection it must be observed that though he was in office nearly eight years under administrations that appointed him, he never at any time applied for anything more than his regular pay as consul. If he was entitled to the \$1,000 a year for judicial services or to any extra allowance, surely then was the time to ask for it, and there was nothing in the way to prevent it. It would seem from this that he himself did not then consider that what he now asks was due him, for if he had he would have asked for it. But it was not till he had been out of office for about seventeen years that he made his first application.

Then let us examine the treaty with Turkey of 1830, that with China of 1844, and the act of Congress of August 11, 1848, passed to put them into execution.

The treaty with Turkey is short and has only one clause, the fourth, in reference to the settlement of disputes or controversies of American citizens, which is in these words, viz:

If litigations and disputes should arise between the subjects of the Sublime Porte and citizens of the United States, the parties shall not be heard, nor shall judgment be pronounced, unless the American dragoman be present. Causes in which the sum may exceed 500 piasters shall be submitted to the Sublime Porte, to be decided according to the laws of equity and justice. Citizens of the United States of America, quietly pursuing their commerce and not being charged or convicted of any crime or offense, shall not be molested; and even when they have committed some offense they shall not be arrested and put in prison by the local authorities, but shall be tried by their minister or consul and punished according to their offense, following in this respect the usage observed toward other Franks.

There is nothing, therefore, in the treaty to authorize the exercise of any judicial function in civil cases by any consul in Turkey, but, on the contrary, such cases are to be tried by the local authorities where the amount in controversy is under 500 piasters and by the Sublime Porte himself when over.

But the treaty between the United States and China was a much more important matter and very different in its provisions. Article XXI is very much to the same effect as Article IV of the treaty with Turkey. It is in these words, viz:

Subjects of China who may be guilty of any criminal act toward citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul or other public functionary of the United States thereto authorized according to the laws of the United States.

Article XXV of the Chinese treaty is the only one relating to civil controversies and rights. These are its provisions, viz:

All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction and be regulated by the authority of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such governments, respectively, without interference on the part of China.

And Article XXIV provides:

And if controversies arise between citizens of the United States and subjects of China which can not be amicably settled otherwise, the same shall be examined and decided, conformably to justice and equity, by the public officers of the two nations acting in conjunction.

Thus it will be seen that in Turkey all civil litigation was to be decided by the Porte in person or the local tribunals, with the reservation only of the right of an American dragoman to be present. But

in China matters not criminal were divided into three classes, each to be settled by a different court.

(1) The American authorities had jurisdiction in regard to rights, whether of property or person, between citizens of the United States in China.

(2) All controversies in China between citizens of the United States and any government other than the Chinese were to be regulated by the treaties between the two governments, without interference on the part of China.

(3) Controversies between citizens of the United States and subjects of China were to be examined and decided by the public officers of the two nations acting in conjunction.

On the 11th August, 1848, Congress passed an act "to give effect to the treaties with China and Turkey, giving certain judicial powers to ministers and consuls of the United States in those countries."

It was, of course, competent and proper for Congress to pass constitutional laws to execute its treaties, but it could not by any legislation change them, and any act of Congress which attempted this would be void to that extent. Congress could not give a consul in Turkey the same powers that one in China might have without the consent evidenced by treaty of the Turkish Government.

The first section of the act of August 11, 1848, refers to the Chinese treaty above and gives the commissioner and consuls of the United States in China, in addition to the other "powers and duties imposed upon them by the provisions of said treaty, judicial authority herein described."

The second section refers to criminal proceedings against citizens of the United States in the dominion of China, including Macao.

The third relates to civil proceedings, and the fourth is as follows, viz:

That such jurisdiction in criminal and civil matters shall in all cases be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute said treaty, extended over all citizens of the United States in China (and over all others to the extent that the terms of the treaty justify or require), so far as such laws are suitable to carry said treaty into effect; but in all cases where such laws are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies, the common law shall be extended in like manner over such citizens and others in China: and if defects still remain to be supplied, and neither the common law nor the statutes of the United States furnish appropriate and suitable remedies, the commissioner shall, by decree and regulation, which shall have the force of law, supply such defects and deficiency.

The subsequent sections, down to and including section 21, provide for the machinery of courts and trials.

This is the twenty-second section:

That the provisions of this act, so far as the same relate to crimes committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May seventh, eighteen hundred and thirty, and shall be executed in the dominion of the Sublime Porte, in conformity with the provisions of said treaty, by the minister of the United States and the consuls appointed by the United States to reside therein, who are hereby ex officio vested with the power herein contained for the purposes above expressed, so far as regards the punishment of crimes.

So that it will be seen that even under this law the consuls in China and in Turkey do not stand on the same footing. In China they were allowed to try both civil and criminal cases; in Turkey criminal only. They were vested with vast powers in China—

(1) To know the statute law of the United States and to judge of its applicability to the demands of justice in China.

(2) To understand the common law and administer it where the United States statutes were not sufficient.

(3) Where neither of these would do, then actually to make laws and execute them.

They were invested by this act, conceding it to be constitutional, with legislative, judicial, and executive powers to make, administer, and put into operation laws to affect the property, the liberty, and the lives of American citizens.

The accompanying letters from the Secretary of State, written in response to a request from the subcommittee to whom this case was referred, are submitted as part of this report.

From these it appears that Mr. De Leon, during the eight years of his consulate, only reported one civil case as having been tried by him. This was in July, 1857, and the Attorney-General then held that he could not try civil cases. (See opinion of Attorney-General, vol. 9, p. 256.)

It also appears that Mr. De Leon never at any time while in office made any application for the \$1,000 a year now demanded.

This, then, is the situation:

The Department of State has not considered that the consuls in Turkey were entitled to the \$1,000 a year for performing judicial functions, and has never in its estimates of appropriation recommended an appropriation for the purpose.

Congress has taken the same view, for no appropriation is made or has been made in annual bills to pay the consuls in Turkey the said sum of \$1,000 a year.

Mr. De Leon himself did not think he was entitled to it, for he did not ask it.

Your committee does not think that, under the law and treaties, Mr. De Leon should be paid what he now claims, and ask to be discharged from the further consideration of his memorial.

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**August 22, 1888.**

[Senate Report No. 2087.]

Mr. Dolph, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1686) for the relief of George S. Fisher, having had the same under consideration, report:

A bill for Mr. Fisher's relief (S. 147) was introduced in the Senate at the first session of the Forty-ninth Congress, considered by the Committee on Foreign Relations, and reported adversely. The committee adopt said report, which is as follows:.

[See Senate Report 105, Forty-ninth Congress, first session. p. 779.]

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**FIFTY-FIRST CONGRESS, FIRST SESSION.**

**January 22, 1890.**

[Senate Report No. 151.]

Mr. Payne, from the Committee on Foreign Relations, submitted the following report:

[See Senate Report 1363, Fiftieth Congress, first session, p. 787.]

[See p. 802.]

**April 30, 1890.**

[Senate Report No. 811.]

Mr. Payne, from the Committee on Foreign Relations, submitted the following report:

The committee find that Alexander Campbell, of West Virginia, Richard F. Miller, of Lynchburg, Va., Francis B. Wheeler, of New York City, and Thomas B. Merry, of Portland, Oregon, were appointed "Assistant Commissioners to the Melbourne Centennial International Exposition," which was held from August 1, 1888, to January 1, 1889, and that they attended such exposition and ably and faithfully discharged the duties that devolved upon them to the satisfaction of the chief commissioner and the Department of State; that the necessary expenses incident to such services largely exceeded the estimate of the Secretary of State; that there remains of the appropriation unexpended and not as yet covered into the Treasury \$10,570.27, from which it is but reasonable and just that the several amounts specified in the bill should be paid.

The committee therefore recommend the passage of the bill with an amendment providing that said sums shall be in addition to the former allowance.

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#### FIFTY-SECOND CONGRESS, FIRST SESSION.

[See pp. 799, 805, 807.]

**June 15, 1892.**

[Senate Report No. 810.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The bill under consideration is for the relief of Mary A. Swift, widow of the late Hon. John F. Swift, envoy extraordinary and minister plenipotentiary of the United States to Japan, who died in that country during the second year of his incumbency of that office. The bill appropriates \$12,000 to the beneficiary, being the amount of one year's salary.

There have been many precedents in our diplomatic history where action has been taken by Congress corresponding to that provided for in this bill. Those most readily occurring to the committee include the widows of General Hurlbut and Seth Ledyard Phelps, ministers to Peru in different years, General Kilpatrick, minister to Chile, and Rev. Henry Highland Garnett, minister to Liberia, to each of whom payments were made of a full year's salary, together with many other instances in which smaller payments were authorized to correspond with circumstances of lesser exigency. But the committee has not been able to find any case in which the conditions call for more liberal treatment than that under consideration.

At the time of the appointment of Mr. Swift, Japan, under the guidance of enlightened rulers, was groping through the darkness of centuries of eastern absolutism toward the light and blessings of representative government. This fact and the fact that this wonderful people looked to ours for inspiration and example led to the selection as minister of Mr. Swift, of California, not merely as a gentleman of

high and peculiar qualifications for the mission, but as a resident of the American State most closely allied to that country in nearness and commercial relations.

It will be remembered that, while a more liberal policy has recently obtained, the sections of their cities within which foreigners were permitted to reside were limited to small areas called "concessions." The house of the American legation was held by lease in the "concession" at Tokio, an unhealthy locality, where malaria had developed typhoid fever, causing death at the legation. When Mr. Swift arrived, this house was uninhabitable from defective drainage and other sanitary imperfections, necessitating a large expenditure to make it fit for occupancy. After Mr. Swift had occupied it only three months the property was sold, a renewal of the lease was denied, and the new owners demanded and were allowed immediate possession. It thus became necessary to seek new quarters, and a site was chosen near the legations of the other great powers, and Mr. Swift contracted with a wealthy Japanese for the building of the new legation. After the building was about two-thirds completed the Japanese Government bought the entire place, without consulting the American minister, and made a tender of it to the United States Government, with the condition that the United States would purchase the house at a cost of \$30,000. The work on the house was discontinued, the foreign office of Japan claiming that it was the business of the contractor to finish it, while the contractor claimed that as the property had been bought by the Japanese Government it was their business to complete it. Having been turned out of the old legation, and not being able to live in an unfinished house, it became necessary to finish the house or that Mr. Swift should resign his position as minister to Japan, for the reason that it was necessary to prevent a rupture with the foreign office of the country to which he was accredited.

To complete and furnish the house and office for the legation, Mr. Swift was obliged to spend several thousand dollars of his private fortune, which, in consideration of the peculiar complications involved, he expected would be reimbursed to him by the foreign office or his own Government. His sudden death prevented these adjustments and subjected his estate and his widow to almost the total loss of these expenditures.

The committee considers it equitable and just to take into account these facts, which have been furnished for its information by official and other authority, as well as the peculiar laws and customs of the country to which Minister Swift was accredited, and the circumstances which rendered it necessary to avoid complications with the Japanese Government while seeking to extend the friendly and commercial relations he was sent there to promote, and it therefore reports the bill for favorable consideration and recommends its passage.

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#### FIFTY-SECOND CONGRESS, SECOND SESSION.

[See p. 799.]

January 31, 1893.

[Senate Report No. 1236.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 3429) for the relief of Charles T. Russell, late consul of the United

States at Liverpool, report the same back to the Senate with a favorable recommendation.

The committee has given careful consideration to all the facts and evidence in connection with this bill, and beg leave to submit the following report, made to the House of Representatives from the Committee on Claims, as containing a complete statement of the case and expressing the views of your committee thereon:

[House Report No. 663, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 3716) for the relief of Charles T. Russell, late United States consul at Liverpool, having considered the same, respectfully report:

From the evidence furnished the committee by the Department of State it appears that the said Charles T. Russell, while consul at Liverpool, from 1885 to 1889, inclusive, and while in the discharge of the duties of that office, expended for the clerical force necessarily employed by him in the shipment and discharge of American seamen at the port of Liverpool the sum of \$3,100. Congress had, prior to the year 1886, provided a fund which the State Department had drawn upon to the amount of about \$2,100 annually, to defray the expenses incurred at the consulate in the shipment and discharge of American seamen, but which it had omitted to provide subsequent to the year 1885.

Mr. Russell was obliged to disburse from his own funds the above-named sum to meet the expenses of this service, as appears by the vouchers hereto annexed.

The consul preceding Mr. Russell at Liverpool called the attention of the State Department to the omission by Congress to provide the funds to meet these expenses, and urged the necessity of continuing said appropriation to his successor. The State Department, recognizing the justice of Mr. Russell's claim, advised him to apply to Congress for reimbursement, as that Department had no authority to use any of its funds for the payment of these expenditures.

Your committee find that the amount named in the accompanying bill was actually and necessarily expended by Mr. Russell, and was less than the usual amount expended by his predecessors for such service: that no part thereof has been repaid to him, and that in justice and equity he is entitled to have the same refunded to him by the Government, and recommend the passage of the accompanying bill.

The annexed correspondence is made a part of this report:

UNITED STATES CONSULATE,  
*Liverpool, June 6, 1885.*

SIR: I have to invite the attention of the Department to the omission of Congress to appropriate specifically, as heretofore, for the expenses attending the shipment and discharge of seamen at this and other consulates.

While personally I have no interest in the Department's action on account of my retirement from consular duties, nevertheless the appropriations for the next fiscal year will be available, and the urgent needs of the consulate warrant me in requesting, in behalf of my successor, an allowance from the item of \$6,000, appropriated by Congress, the expenditure of which is placed at the discretion of the President, for the several consulates and commercial agencies in the transaction of their business.

The sum, from my experience and observation, having in view the proportionate amount of work attending the shipping office at this and other seaport consulates, which I think should be awarded this consulate is \$2,000.

In support of the claim for the above-named sum I beg to invite the attention of the Department to my dispatch No. 233, dated June 19, 1883, in which will be found more in detail the facts touching the requirements existing now as then, which need not be repeated in this dispatch.

I shall therefore venture to suggest that the Department at an early day authorize the expenditure of the sum named to defray the expenses of the shipment and discharge of seamen at this consulate for the fiscal year ending June 30, 1886.

I have the honor to be, respectfully, your obedient servant,

STEPHEN B. PACKARD,  
*Consul.*

Hon. JAMES D. PORTER,  
*Assistant Secretary of State.*

UNITED STATES CONSULATE,  
*Liverpool, November 8, 1889.*

Hon. WILLIAM F. WHARTON,  
*Assistant Secretary of State, Washington, D. C.*

SIR: I desire to bring to the notice of the Department of State, with a view to having the matter brought before Congress at its next sitting, the very heavy expenditure I have been reluctantly obliged to make, during the four years I was consul, in order to carry on efficiently the work in connection with the shipping department of the consulate, the total amounting to £600 10s. 6d.

When I arrived at my post in June, 1885, I found that in addition to the allowance of \$2,000 per annum for clerk hire there was an allowance of \$2,100 per annum for the shipment and discharge of seamen, but that after the end of that month it would be discontinued altogether, Congress having made no appropriation.

This matter was brought before the notice of the State Department by my predecessor in his dispatch No. 319, dated June 6, 1885, and also by myself in my Nos. 52 and 91, dated February 1 and December 1, 1886, and I was finally informed that I could not receive any assistance from the Government in that direction, but that the subject would be brought to the notice of Congress—Department instruction No. 91, dated January 19, 1887.

No appropriation, however, was made for that department of the consulate during the whole four years that I was in charge, but the work had to be discharged. It is hardly necessary, I think, for me to say that the work in connection with the shipment and discharge of seamen at a port of such magnitude as Liverpool is very great, and although it was performed with as small a clerical force as possible, it has actually cost me the sum of £600 10s. 6d., which I paid in addition to the annual allowance for clerk hire.

Seeing, therefore, that the expenditure is absolutely necessary for clerical work in connection with the shipment and discharge of seamen, I am convinced that if these facts are brought before Congress I will be reimbursed this heavy outlay.

I therefore respectfully claim that the sum stated is due me, and I do so feeling that I am making a just and honorable claim, and one that can not but recommend itself to the consideration of Congress.

Some of the clerks to whom I paid this amount are no longer connected with the office, but I have no doubt I can procure from them a proper voucher for the amount each of them received, but those who remain can certify to this expenditure.

I am, sir, your obedient servant,

CHAS. T. RUSSELL.  
*Late Consul.*

LIVERPOOL, *January 10, 1890.*

I, William J. Saulis, vice and deputy consul of the United States of America at Liverpool, do hereby certify that I was, during the period Mr. Russell was consul here, bookkeeper, and as such had the paying of salaries to the clerks of the consulate. That during the period from July 1, 1885, to June 30, 1889, I paid the sum of £600 10s. 6d. for clerical services performed in connection with the shipping department of the consulate in excess of the amount of clerk hire allowed during that period, the said expenditure having been actually and necessarily made, as appears by the books kept by me and now in Mr. Russell's possession.

[SEAL.]

W. J. SAULIS,  
*Vice and Deputy Consul of the United States of America at Liverpool.*

I, William Pierce, do hereby make oath and say that during the period 1st July, 1885, to 30th June, 1889, I was employed as clerk in the consulate at Liverpool. From my own knowledge I am aware and know that the sum of £600 10s. 6d. was actually paid by Mr. Russell in excess of the amount allowed for clerk hire during that period. Part of said amount was paid to myself and the remaining portion to clerks who are not now here.

WM. PIERCE.

Subscribed and sworn to before me this 10th day of January, 1890.

[SEAL.]

THOS. H. SHERMAN,  
*Consul of the United States of America at Liverpool.*

UNITED STATES CONSULATE, 26 CHAPEL STREET,  
*Liverpool, January 11, 1890.*

The statements herewith of the vice-consul and Mr. Pierce are entitled to full faith and credit, but I desire to add that I am convinced that the disbursements referred to were actually made and were actually necessary. I am not now paying so much for extra clerks as Mr. Russell paid, because the Department has sent to the consulate a competent consular clerk, but it will be apparent to anyone who visits this office that additional allowance for clerk hire is needed.

THOS. H. SHERMAN,  
*Consul.*

DEPARTMENT OF STATE,  
*Washington, February 21, 1890.*

CHARLES T. RUSSELL, Esq.,  
*Late Consul of the United States, Liverpool.*  
*Now at 50 Lime Street, London, England.*

SIR: Referring to your dispatch of the 22d ultimo, I have to inform you that the Department has no funds out of which it has authority to render such relief as is required by your dispatch.

Your only recourse would seem to be to present your claim for reimbursement of the amount expended for clerk hire to Congress.

I am, sir, your obedient servant,

WILLIAM F. WHARTON,  
*Assistant Secretary.*

February 15, 1893.

[Senate Report No. 1294.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The work of Mr. Haswell is one of great value, and its acquisition by the Government has been repeatedly recommended by the Department of State.

Secretary Blaine, under date May 6, 1892, in a personal letter to the chairman of this committee, strongly recommended the purchase of the manuscript designated in the amendment, and similar recommendations (hereto annexed) had previously been made by Mr. Frelinghuysen and also by Mr. Blaine.

The present Secretary of State, in a letter hereto appended, urges an appropriation for the purchase of this work.

The subject has also been considered in House Ex. Doc. 110, Forty-eighth Congress, second session, hereto appended.

The adoption of the amendment is recommended.

DEPARTMENT OF STATE,  
*Washington, February 24, 1885.*

SIR: I have the honor to again call your attention to the work prepared by Mr. John H. Haswell, Chief of the Bureau of Indexes and Archives in this Department, entitled "The Chronological History of the Department of State and the Foreign Relations of the Government from September 3, 1774, down to the Present Time," and to express to you my earnest hope that Congress will not adjourn without appropriating a sum of money for the purchase of the manuscript from the compiler. The work has been compiled with infinite attention to historical accuracy and completeness by a gentleman whose long and efficient service in the Department has put him in a position to know perfectly the details of the subject on which he has written, and his researches outside the Department have resulted in the discovery of many important and hitherto unknown facts in the history of our foreign relations that should be at the service of the Department.

I do not think \$6,000 too large a sum to pay Mr. Haswell for his work, considering the value of the book to this Department and the foreign service generally, and I earnestly recommend that that sum be appropriated for its purchase.

I have the honor to be, sir, your obedient servant,

FREDK. T. FRELINGHUYSEN.

HON. JOHN F. MILLER,

*Chairman Committee on Foreign Relations, United States Senate.*

DEPARTMENT OF STATE,  
*Washington, December 20, 1891.*

SIR: I have the honor to invite your considerate attention to the accompanying draft of a proposed amendment to the diplomatic and consular appropriation bill for the fiscal year ending June 30, 1892, providing for the appropriation of \$6,000 to be expended in the purchase of the manuscript of "The Chronological History of the Department of State and the Foreign Relations of the Government from September 5, 1774, to the Present Date," from Mr. John H. Haswell, Chief of the Bureau of Indexes and Archives in this Department, by whom it has been compiled with industrious care and with the advantage of years of experience and familiarity with the subject.

Copy of a letter of my predecessor, Mr. Frelinghuysen, in relation to this matter, dated March 24, 1884, and copy of a report upon the work by Mr. Henry O'Connor, late examiner of claims of the Department, dated September 26, 1883, are inclosed for your convenient reference and information. Mr. Frelinghuysen points out the value and usefulness of the book; commends its arrangement and completeness, and asks for its purchase for publication, "in the full belief that it will be a valuable handbook of reference to the heads of the Executive Departments of the Government, and in the certainty that it will be invaluable to the Committees of Foreign Affairs of Congress, to Secretaries of State and their assistants, and to officers in the foreign service of the Government." I concur in his opinion and commendation, and add the expression of my own conviction that the work, if purchased, would be of special and lasting service.

Its compilation has occupied much of Mr. Haswell's time, outside of his regular duties at the Department, during the last eighteen years. An item looking to its purchase was submitted by this Department, under the title "Historical Register of the Department of State," in the estimates for the fiscal year ending June 30, 1892.

I have the honor, etc.,

JAMES G. BLAINE.

HON. EUGENE HALE,  
*United States Senate.*

DEPARTMENT OF STATE,  
*Washington, January 14, 1893.*

SIR: I have the honor to call your attention to and to bespeak your favorable consideration of an item submitted in the estimates of appropriations required by this Department for the coming fiscal year, in the sum of \$6,000, for the purchase of "The Historical Register of the Department of State," compiled by Mr. John H. Haswell, Chief of the Bureau of Indexes and Archives.

The full description of the work, as given in the estimates, shows how complete are its scope and usefulness, particularly as regards the business of this Department. It is no less valuable by reason of the historical information, which is one of its characteristic features, as a book of reference for members of Congress, for officers of the Government, and for students in American history. It has long since been recognized as such by high officials of this Department, and Secretaries of State Frelinghuysen, Bayard, and Blaine have in turn recommended its purchase to Congress.

I wish to add my own earnest recommendation to theirs, and to say that, by so doing, I am not merely seeking to secure to Mr. Haswell a remuneration for his work. I sincerely believe the acquisition of the Historical Register to be for the public interest.

I am, sir, your obedient servant,

JOHN W. FOSTER.

HON. CHARLES F. CRISP,  
*Speaker of the House of Representatives.*

[House Ex. Doc. No. 110, Forty-eighth Congress, second session.]

TREASURY DEPARTMENT, *January 21, 1885.*

SIR: I have the honor to forward herewith an estimate of appropriation received from the Secretary of State for \$6,000 to purchase the manuscript of the work entitled "The Chronological History of the Department of State and the Foreign Relations of the Government from September 5, 1774, to the Present Time," compiled by John H. Haswell.

Very respectfully,

H. McCULLOCH,  
*Secretary.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF STATE,  
*Washington, January 19, 1885.*

SIR: I have the honor to request that, under the act passed July 7, 1884, you recommend to Congress an appropriation of the sum of \$6,000 to enable the Secretary of State to purchase the manuscript of the work entitled "The Chronological History of the Department of State and the Foreign Relations of the Government from September 5, 1774, to the Present Time," compiled by Mr. John H. Haswell, Chief of the Bureau of Indexes and Archives in this Department. The subject of the purchase of the manuscript from the author for publication was presented to Congress at its last session, as will appear from the letter addressed by me on the 24th day of March last to the Speaker of the House of Representatives, a copy of which is inclosed.

I now learn from Mr. Haswell, by a communication from him of even date (a copy of which is also inclosed herewith), that he is engaged in carrying the record of the Department and the foreign service down to July 1, 1885, a period nearly two years later than was intended at the time the letter of the Department above alluded to was sent to the Speaker.

This addition makes the work a comprehensive history of every branch of the foreign relations of this country, of the treaties, the international conferences, the diplomatic and consular service, the Committees of Foreign Affairs of Congress, and the officers of every grade of this Department from the time of the first Colonial Congress down to the very day on which the publication of the work is expected to be completed, and gives the compilation an inestimable value as a reference book to this Department, to Committees on Foreign Affairs, and to the foreign service of the Government. In the opinion of this Department, the immediate purchase and speedy publication of this work will be of incalculable benefit, and I have the honor to recommend that such steps as are necessary to that end be taken as soon as possible. I have also to recommend that for that purpose a clause similar to the draft inclosed herewith be inserted in the proper appropriation bill.

I have the honor to be, sir, your obedient servant,

FREDK. T. FRELINGHUYSEN,

Hon. HUGH McCULLOCH,  
*Secretary of the Treasury.*

To enable the Secretary of State to purchase from John H. Haswell, Chief of the Bureau of Indexes and Archives in the Department of State, the manuscript of "The Chronological History of the Department of State and the Foreign Relations of the Government from September 5, 1774, to July 1, 1885," prepared by him, the sum of \$6,000 is hereby appropriated.

And the Public Printer is hereby authorized, upon the requisition of the Secretary of State, to cause to be printed and bound in cloth, for the use of the Department of State, 2,000 copies of the above-mentioned work.

DEPARTMENT OF STATE,  
*Washington, March 24, 1885.*

SIR: Mr. John H. Haswell, chief of the the bureau of indexes and archives in this Department, has compiled a chronological history of the Department of State and of the foreign relations of the United States from the time of the organiza-

tion of the first Colonial Congress, in September, 1774, down to the present time. In it is presented a complete and accurate record of the dates of appointment and terms of service of all presiding officers of the Colonial Congress, of Presidents of the United States, of Secretaries of State, under secretaries, and all officers, clerks, etc., of this Department (including those of the Patent Office previous to its transfer to the Department of the Interior), of committees having charge of our foreign affairs, and of all officers connected with the foreign service of the United States, either diplomatic, consular, political, or special, as well as the dates of presentation and terms of service of all representatives of foreign countries accredited to this Government. A brief synopsis of every treaty, convention, protocol, or agreement between the United States and a foreign government, and the cause, nature, and result of every international tribunal and commission to which the United States has been a party.

The work has been compiled by Mr. Haswell with the greatest regard for completeness and accuracy—about twelve years having been consumed by him (outside of his regular duties at the Department) in its preparation—and he has succeeded in arranging its contents in such a form as to facilitate in the highest possible degree a reference to any particular subject or to the official history of any individual, thus insuring its value as a handbook of reference. Many important facts in the early history of our foreign relations not hitherto known have been discovered by the author in his exhaustive researches among the Government archives and are here presented for the first time; and his work is of especial value because it completes the imperfect records of the early period of this Department, many of which were destroyed during the war of 1812.

Two of the Assistant Secretaries of State and the examiner of claims have examined the work and recommend its purchase for publication, in the full belief that it will be a valuable handbook of reference to the heads of the Executive Departments of the Government and in the certainty that it will be invaluable to the Committees of Foreign Affairs of Congress, to Secretaries of State and their assistants, and to officers in the foreign service of the Government.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. JOHN G. CARLISLE,  
*Speaker of the House of Representatives.*

DEPARTMENT OF STATE,  
*Washington, September 26, 1883.*

SIR: I have gone over, with the aid of Mr. Haswell and with some care on my own part, that gentleman's rare and valuable compilation of the officers, employees, and events of the Department of State, including our foreign service, diplomatic and consular, from the earliest steps of the colonists toward independence up to the present year.

Mr. Haswell's unpretentious work shows both skill and industry.

Commencing with the Continental Congress in 1774, he has given a bird's-eye view of the men and events of which he treats up to the present year—Presidents and Vice-Presidents of the United States; Secretaries of State and Assistant Secretaries; all the officers and clerks who have ever been in the Department; all our ministers abroad, general and special; all consular officers of every grade who have been in the service of the Government; the date and character of all treaties and conventions concluded between the United States and foreign powers; all commissions and arbitrations established under claims conventions or to which this Government was a party.

This, though its chief, is by no means its only value. It is interspersed with pertinent and rare scraps of history, which to the curious scholar, the historian, or the gentleman of leisure will be found most interesting and valuable.

To all the Executive Departments of the Government it would prove to be a most valuable book of reference; to this Department it would be almost invaluable, and should be on the tables of the Secretary and his assistants.

Such a work, even imperfectly done, would be useful, but one of the chief merits of Mr. Haswell's performance is in the accuracy, exactness, and completeness with which he has accomplished his laborious task.

I hope some way may be found to make the work available for use and at the same time to remunerate Mr. Haswell for what must have cost him many years of labor.

With great respect, etc.,

HENRY O'CONNOR,  
*Examiner of Claims.*

Hon. FREDERICK T. FRELINGHUYSEN,

DEPARTMENT OF STATE.  
BUREAU OF INDEXES AND ARCHIVES,  
*Washington, January 12, 1885.*

SIR: I have the honor to again respectfully call your attention to my work, "The Chronological History of the Department of State and the Foreign Relations of the Government from 1774 to the present time," and to inform you that I am now engaged in completing the compilation down to July 1, 1885, a date nearly two years later than was intended when I had the honor to present the subject to you in March last. I think that you will agree with me that the additional labor thus entailed merits some additional compensation, and I have the honor to respectfully request that the proper steps be taken with a view to purchasing my work and appropriating for such purchase the sum of \$6,000.

I have the honor to be, sir, your obedient servant,

JOHN H. HASWELL,  
*Chief of Bureau of Indexes and Archives.*  
Hon. FREDERICK T. FRELINGHUYSEN,  
*Secretary of State.*

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FIFTY-THIRD CONGRESS, SECOND SESSION.

[See pp. 805, 807.]

April 11, 1894.

[Senate Report No. 319.]

Mr. Daniel, from the Committee on Foreign Relations, submitted the following report:

A bill of the tenor of the proposed measure was considered and reported favorably by this committee during the first session of the Fifty-second Congress.

The committee, upon reconsideration of the subject, affirms its former action and recommends the passage of the bill.

A copy of the former report is hereto attached.

[See Senate Report 810, Fifty-second Congress, first session, p. 791.]

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[See p. 792.]

May 12, 1894.

[Senate Report No. 400.]

Mr. Frye, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1999) for the relief of Charles T. Russell, late consul of the United States at Liverpool, report the same back to the Senate with a favorable recommendation.

The committee has given careful consideration to all the facts and evidence in connection with this bill and beg leave to submit the following report, made to the House of Representatives from the Committee on Claims, as containing a complete statement of the case and expressing the views of your committee thereon:

[House Report No. 663, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 3716) for the relief of Charles T. Russell, late United States consul at Liverpool, having considered the same, respectfully report:

From the evidence furnished the committee by the Department of State it appears that the said Charles T. Russell, while consul at Liverpool, from 1885 to

1889, inclusive, and while in the discharge of the duties of that office, expended for the clerical force necessarily employed by him in the shipment and discharge of American seamen at the port of Liverpool the sum of \$3,100. Congress had, prior to the year 1886, provided a fund, which the State Department had drawn upon to the amount of about \$2,100 annually, to defray the expenses incurred at the consulate in the shipment and discharge of American seamen, but which it had omitted to provide subsequent to the year 1885.

Mr. Russell was obliged to disburse from his own funds the above-named sum to meet the expenses of this service, as appears by the vouchers hereto annexed.

The consul preceding Mr. Russell at Liverpool called the attention of the State Department to the omission by Congress to provide the funds to meet these expenses and urged the necessity of continuing said appropriation to his successor. The State Department, recognizing the justice of Mr. Russell's claim, advised him to apply to Congress for reimbursement, as that Department had no authority to use any of its funds for the payment of these expenditures.

Your committee find that the amount named in the accompanying bill was actually and necessarily expended by Mr. Russell and was less than the usual amount expended by his predecessors for such service; that no part thereof has been repaid to him, and that in justice and equity he is entitled to have the same refunded to him by the Government, and recommend the passage of the accompanying bill.

The annexed correspondence is made a part of this report.

UNITED STATES CONSULATE,  
*Liverpool, June 6, 1885.*

SIR: I have to invite the attention of the Department to the omission of Congress to appropriate specifically as heretofore for the expenses attending the shipment and discharge of seamen at this and other consulates.

While personally I have no interest in the Department's action on account of my retirement from consular duties, nevertheless the appropriation for the next fiscal year will be available, and the urgent needs of the consulate warrant me in requesting, in behalf of my successor, an allowance from the item of \$6,000, appropriated by Congress, the expenditure of which is placed at the discretion of the President, for the several consulates and commercial agencies in the transaction of their business.

The sum, from my experience and observation, having in view the proportionate amount of work attending the shipping office at this and other seaport consulates, which I think should be awarded this consulate is \$2,000.

In support of the claim for the above-named sum I beg to invite the attention of the Department to my dispatch No. 233, dated June 19, 1883, in which will be found more in detail the facts touching the requirements existing now as then, which need not be repeated in this dispatch.

I shall therefore venture to suggest that the Department at an early day authorize the expenditure of the sum named to defray the expenses of the shipment and discharge of seamen at this consulate for the fiscal year ending June 30, 1886.

I have the honor to be, respectfully, your obedient servant,

STEPHEN B. PACKARD, *Consul.*

Hon. JAMES D. PORTER,  
*Assistant Secretary of State.*

UNITED STATES CONSULATE,  
*Liverpool, November 8, 1889.*

Hon. WILLIAM F. WHARTON,  
*Assistant Secretary of State, Washington, D. C.*

SIR: I desire to bring to the notice of the Department of State, with a view to having the matter brought before Congress at its next sitting, the very heavy expenditure I have been reluctantly obliged to make during the four years I was consul, in order to carry on efficiently the work in connection with the shipping department of the consulate, the total amounting to £600 10s. 6d.

When I arrived at my post in June, 1885, I found that in addition to the allowance of \$2,000 per annum for clerk hire there was an allowance of \$2,100 per annum for the shipment and discharge of seamen, but that after the end of that month it would be discontinued altogether, Congress having made no appropriation.

This matter was brought before the notice of the State Department by my predecessor in his dispatch No. 319, dated June 6, 1885, and also by myself in my Nos.

52 and 91, dated February 1 and December 1, 1886, and I was finally informed that I could not receive any assistance from the Government in that direction, but that the subject would be brought to the notice of Congress—Department instruction No. 91, dated January 19, 1887.

No appropriation, however, was made for that department of the consulate during the whole four years that I was in charge, but the work had to be discharged. It is hardly necessary, I think, for me to say that the work in connection with the shipment and discharge of seamen at a port of such magnitude as Liverpool is very great, and although it was performed with as small a clerical force as possible it has actually cost me the sum of £600 10s. 6d., which I paid in addition to the annual allowance for clerk hire.

Seeing, therefore, that the expenditure is absolutely necessary for clerical work in connection with the shipment and discharge of seamen, I am convinced that if these facts are brought before Congress I will be reimbursed this heavy outlay.

I therefore respectfully claim that the sum stated is due me, and I do so feeling that I am making a just and honorable claim, and one that can not but recommend itself to the consideration of Congress.

Some of the clerks to whom I paid this amount are no longer connected with the office, but I have no doubt I can procure from them a proper voucher for the amount each of them received, but those who remain can certify to this expenditure.

I am, sir, your obedient servant,

CHAS. T. RUSSELL,  
*Late Consul.*

LIVERPOOL, *January 10, 1890.*

I, William J. Saulis, vice and deputy consul of the United States of America at Liverpool, do hereby certify that I was, during the period Mr. Russell was consul here, bookkeeper, and as such had the payment of salaries to the clerks of the consulate; that during the period from July 1, 1885, to June 30, 1889, I paid the sum of £600 10s. 6d. for clerical services performed in connection with the shipping department of the consulate in excess of the amount of clerk hire allowed during that period, the said expenditure having being actually and necessarily made, as appears by the books kept by me and now in Mr. Russell's possession.

[SEAL.]

W. J. SAULIS,

*Vice and Deputy Consul of the United States of America at Liverpool.*

I, William Pierce, do hereby make oath and say that during the period 1st July, 1885, to 30th June, 1889, I was employed as clerk in the consulate at Liverpool. From my own knowledge I am aware and know that the sum of £600 10s. 6d. was actually paid by Mr. Russell in excess of the amount allowed for clerk hire during that period. Part of said amount was paid to myself and the remaining portion to clerks who are not now here.

WM. PIERCE,

Subscribed and sworn to before me this 10th day of January, 1890.

[SEAL.]

THOS. H. SHERMAN,

*Consul of the United States of America at Liverpool.*

UNITED STATES CONSULATE, 26 CHAPEL STREET,

*Liverpool, January 11, 1890.*

The statements herewith to the vice-consul and Mr. Pierce are entitled to full faith and credit, but I desire to add that I am convinced that the disbursements referred to were actually made and were actually necessary. I am not now paying so much for extra clerks as Mr. Russell paid, because the Department has sent to the consulate a competent consular clerk, but it will be apparent to anyone who visits this office that additional allowance for clerk hire is needed.

THOS. H. SHERMAN, *Consul.*

DEPARTMENT OF STATE,  
Washington, February 21, 1890.

CHARLES T. RUSSELL, Esq.,  
*Late Consul of the United States, Liverpool,  
Now at 50 Lime Street, London, England.*

SIR: Referring to your dispatch of the 22d ultimo, I have to inform you that the Department has no funds out of which it has authority to render such relief as is required by your dispatch.

Your only recourse would seem to be to present your claim for reimbursement of the amount expended for clerk hire to Congress.

I am, sir, your obedient servant,

WILLIAM F. WHARTON,  
*Assistant Secretary.*

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[See p. 791.]

May 31, 1894.

[Senate Report No. 458.]

Mr. Dolph, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, having had under consideration Senate bill 2024, and having duly considered the same, report the same favorably with an amendment.

The committee adopt the following House report:

[House Report No. 1378, Fifty-second Congress, first session.]

The Committee on Foreign Affairs, to whom was referred House bill 1891, having had the same under consideration, submit the following report:

By joint resolution of Congress approved February 1, 1888, the sum of \$50,000, or so much thereof as might prove necessary, was appropriated to pay such expenses as might be incurred by the Government of the United States in accepting the invitation of the British Government to participate in the international exhibition to be held in Melbourne August 1, 1888.

The sum thus appropriated, it was further directed, was to be expended in the discretion of the Secretary of State.

Under the authority of this act the Secretary of State appointed one commissioner and four assistant commissioners to have general charge and supervision of American exhibits, and to properly represent the interests of the American people at the said exposition, fixing their salaries at the rate of \$5,000 and expenses for the commissioner and \$2,500 for each of the assistant commissioners, the latter amount being for both salary and expenses.

The commissioner so appointed was Frank McCappin, of California; and the assistant commissioners, F. B. Wheeler, of New York; E. L. Miller, of Virginia; Thomas B. Merry, of Oregon; and Alex. Campbell, of Louisiana.

Prior to these appointments, however, the press throughout the country, in writing of the approaching exposition, had announced that the compensation of the assistant commissioners would be \$5,000 and expenses.

To ascertain the truth of these statements inquiries were made at the State Department on the request of the gentlemen subsequently appointed, and these were met by the assurance that it was the purpose of the Department to allow each of the assistant commissioners a salary of \$2,500 together with \$2,500 each for the expenses of the trip and of the sojourn in Australia.

Thereupon Messrs. Wheeler, Miller, Merry, and Campbell, who had been already selected as assistant commissioners, though not yet publicly appointed, signified their willingness to serve and commenced at once their preparations for the journey to Australia.

It was not until they had made all necessary arrangements for a prolonged absence from the country, after they had engaged passage on the steamer sailing to Melbourne, that the State Department publicly announced the appointments, together with the unexpected reduction in compensation to \$2,500 to cover both expenses and salary.

Acting under the belief that this sum might prove sufficient for their expenses of travel and living during their nine months' absence in Australia, the assistant commissioners decided not to draw back, but to continue to Melbourne and render there the service the Government required of them.

It was made to appear, however, to the subcommittee before whom one of the assistant commissioners, Mr. Alex. Campbell, appeared that the expenses were far in excess of what had been anticipated; that the commissioners were subjected to large and unexpected expenses in the discharge of their duties, and that the amount asked in this bill would not repay them for the actual and necessary outlays made in properly discharging the duties of their position as commissioners.

Inasmuch as the labors of these assistant commissioners were not only arduous, but of great value to the country as well; that their acceptance of the office was due to a misunderstanding or to misinformation for which they were in nowise responsible; that their actual expenses in the prosecution of this work for the Government were greater than what has been already allowed, and what they now ask, and that there yet remains an unexpended balance of \$10,770.27 from the appropriation of February 1, 1888, the committee recommends the passage of this bill, wherein an additional compensation of \$1,500 is asked for each of these four assistant commissioners.

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## FIFTY-FOURTH CONGRESS, FIRST SESSION.

January 13, 1896.

[Senate Report No. 43.]

Mr. Turpie, from the Committee on Foreign Relations, submitted the following report:

The memorialist, Mrs. Eliza J. Gray, is the widow of Isaac P. Gray, deceased, late the United States minister to the Republic of Mexico. Mr. Gray was commissioned as such minister March 20, 1893. Arrived in the City of Mexico May 2, 1893. Presented his credentials and entered upon the discharge of his duties May 9, 1893. Being called home by the very serious illness of his son, Pierre, Mr. Gray left the City of Mexico December 7, 1894, upon three months' leave of absence for Indianapolis, Ind., where his son was at that time residing. While at Indianapolis, attending upon his son's illness, in the latter part of January, 1895, Mr. Gray, by request, visited Washington to confer with the late Secretary of State, the Hon. Walter Q. Gresham, concerning the then existing complications between the Governments of Mexico and Guatemala, which were at that time becoming daily more strained and critical, wherein the good offices of the United States had been tendered and were yet pending.

Although his full regular leave had not expired, Minister Gray, in compliance with the wishes of the Secretary of State, engaged to leave his son, who was then convalescing, and return to his post as soon as practicable. He started from Indianapolis for the City of Mexico February 7, 1895, by the way of Chicago, and arrived on the morning of February 14. While in Washington in January before he had contracted a slight cold. He thought himself recovered from it when he left Indianapolis, but the exposure and fatigue of the trip renewed and intensified the disease.

On arriving at San Antonio, Tex., en route, he consulted a physician. His condition was not deemed alarming. The train stopped long enough to have the prescription filled, and Minister Gray continued on his journey, stating to the physician that official business made it necessary that he should reach Mexico as soon as possible. During the journey, on the night preceding his arrival at the City of

Mexico, his condition changed with great suddenness for the worse. He arrived at 9 o'clock a. m. in a state of unconsciousness, and died at 7 o'clock p. m. the same day of an acute attack of double pneumonia.

The memorialist had remained in the City of Mexico awaiting the return of her husband, without any warning of the terrible calamity which was about to befall her.

Relying upon established precedents granting allowances in such cases, and upon the fact that Minister Gray lost his life in the attempt to discharge the public duties of an important station in the service of the Government, we are of the opinion that such relief as an appropriation usual in these cases may afford ought to be granted to the petitioner.

The late minister, as is well known from inspection of the public records of the State Department, and from the expressions of opinion by the Secretary of State then in office, had discharged his diplomatic duties with singular diligence, fidelity, and very marked ability.

The following precedents in such cases have been kindly furnished by the Secretary of State:

The appropriation act approved March 3, 1879, gave to Mrs. Taylor, wife of Bayard Taylor, who died while minister to Germany, at Berlin, the sum of \$7,000.

Joint resolution of July 28, 1882, gave to Mrs. Hurlburt, widow of General Hurlburt, who died while minister to Peru, one year's salary and legal allowances after deductions of salary paid.

The joint resolution also of the same date gave to Mrs. Kilpatrick, widow of General Kilpatrick, one year's salary and legal allowances after deductions of salary paid.

A joint resolution approved August 1, 1892, gave to Mrs. Garnett, the widow of Rev. Henry Garnett, who died while minister to Liberia, one year's salary and legal allowances after deductions of salary paid. Mr. Garnett had only been in Liberia a few weeks.

The deficiency bill approved March 3, 1883, gave to Mrs. Marsh, widow of George P. Marsh, who died while minister to Italy, the balance of one year's salary, reckoned from June 20, 1882.

The act approved December 23, 1884, gave to Mrs. Jane Venable, widow of William E. Venable, who died while minister to Guatemala, the sum of \$5,636, being the balance of one year's salary.

The deficiency bill approved March 13, 1885, gave to Mrs. Wing, widow of Rumsey Wing, who died while minister to Ecuador, and to Mrs. Hunt, widow of William H. Hunt, who died while minister to Russia, a sum of money equal to six months' salary in each case.

Page 906, Statutes at Large, volume 25, the appropriation act shows payment to the widow of Moses A. Hopkins, late minister to Liberia, of six months' salary.

The remains of Minister Gray were conveyed from his late residence, in the City of Mexico, escorted by a large military and civic procession, among whom were the President and other chief officers of that Republic, to the railroad station of departure for the north. They were thence conveyed to Indianapolis and lay in state in the capitol, and were buried at Union City, Ind., in the family cemetery.

The salary of the minister to Mexico at that time was \$17,500. We think that under the circumstances of the death of a citizen so eminent and an officer so highly honored, both by the Government of his own country and of that to which he was accredited, a sum equal to one-half of the annual salary, \$8,750, would be a reasonable allowance.

[See p. 807.]

**February 27, 1896.**

[Senate Report No. 376.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 1974) for the relief of Mrs. Harriet D. Newson, respectfully report:

The late Maj. Thomas M. Newson, husband of the beneficiary under the bill, was, at the time of his death, March 30, 1893, consul of the United States and resident at Malaga, Spain. He was one of the pioneers of Minnesota, and for thirty years a leading editor at St. Paul, the capital of that State. During the civil war he bore a commission on the Union side, and acquitted himself with ability and gallantry, gaining promotion. He was a generous, unselfish man, whose name is held in reverent regard, particularly by his lifetime associates, the older residents of Minnesota. A characteristic of Major Newson through life was his unselfish devotion to the sick and suffering. This led to his death; for an attack of smallpox, which proved fatal, was incurred by the Major in labors among the poor of Malaga during an epidemic of that disease. He paid with his life the penalty of philanthropy. His widow is left in delicate health, without means, with an invalid, incurable daughter who requires confinement in an infirmary, and with a delicate young daughter dependent on her mother. It is altogether a case which appeals in the strongest manner to sympathy and to Government aid in her behalf, to the furthest permissible extent.

The committee cordially recommend the passage of the bill.

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**April 22, 1896.**

[Senate Report No. 779.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following adverse report:

The bill under consideration was before this committee in the Fiftieth and Fifty-first Congresses, and was elaborately considered and exhaustively reported upon in both instances, and in both adversely. The committee on further review of the law applicable to the case, and the facts and circumstances connected with it, affirm the former action, and reporting adversely, recommend that the bill be indefinitely postponed.

The report of the committee in the Fifty-first Congress is hereto appended and made a part of this report.

[See Senate Report 1363, Fiftieth Congress, first session, p. 787.]

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[See pp. 799, 807.]

**June 9, 1896.**

[Senate Report No. 1138.]

Mr. Cameron, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 2071) for the relief of Mary A. Swift, having had the same under consideration, beg leave to submit the following report:

Upon an examination of the Journals of both Houses of Congress your committee find that in the first session Fifty-second Congress a

bill was favorably reported from the Committee on Foreign Affairs of the House for the relief of Mrs. Mary A. Swift (House Report No. 1061), but failed to receive the action of that body during that Congress.

In the same session and Congress a bill for the relief of the same claimant was favorably reported by Mr. Davis, of Minnesota, from the Senate Committee on Foreign Relations (Senate Report No. 810). The bill also failed of action in the Senate during that Congress.

Again, in the second session Fifty-third Congress a similar bill was favorably reported by Mr. Daniel, of Virginia, from the Committee on Foreign Relations (Senate Report No. 319). It again failed to receive action in the Senate during that Congress.

Your committee, upon a further consideration of the subject (which finds itself before it for the third time), affirms its previous action, recommends the passage of the bill, and adopts the former report as the basis of its present action.

The report heretofore made by the committee in two previous Congresses is as follows:

[See Senate Report No. 810, Fifty-second Congress, first session, p. 791.]

#### PRECEDENTS.

Special allowances by Congress to widows of diplomatic representatives who died abroad have been made as follows, as shown by the chief of accounts of the Department of State:

Widow of Bayard Taylor, who died while minister to Germany, \$7,000. (Act of March 3, 1879).

Widow of General Hurlbut, who died while minister to Peru, one year's salary. (Joint resolution of July 28, 1882.)

Widow of General Kilpatrick, who died while minister to Chile, one year's salary. (Joint resolution of July 28, 1882.)

Widow of Rev. Henry Highland Garnett, who died while minister to Liberia, one year's salary. (Joint resolution, August 1, 1882.)

Widow of George P. Marsh, who died while minister to Italy, balance of one year's salary. (Deficiency act, March 3, 1883.)

Widow of William E. Venable, who died while minister to Guatemala in 1857, \$5,636.87, the balance of one year's salary. (Act of December 23, 1884.)

Widow of E. Rumsey Wing, who died while minister to Ecuador, six months' salary. (Deficiency act, March 3, 1885.)

Widow of William H. Hunt, who died while minister to Russia, six months' salary. (Deficiency act, March 3, 1885.)

Widow of Seth Ledyard Phelps, who died while minister to Peru, \$10,000, one year's salary. (Act of August 3, 1886.)

Widow of Moses A. Hopkins, who died while minister to Liberia, \$2,500, six months' salary. (Deficiency act, March 2, 1889.)

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#### FIFTY-FIFTH CONGRESS, SECOND SESSION.

February 17, 1898.

[Senate Report No. 603.]

Mr. Turpie, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred an amendment to the bill making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1899, make the following report:

Your committee are of the opinion, under the circumstances of the case, that the amendment ought to be inserted in the appropriation

bill named, but we do not wish to make a precedent providing that in case of death of the head of a bureau of this character there should, as a matter of course, be made an appropriation for the remainder of the salary, as is done usually in the case of foreign ministers and other diplomatic agents, but we are of the opinion in this case that Joseph P. Smith, now deceased, late Director of the Bureau of American Republics, was in effect discharging duties of a quasi diplomatic character as the head of that Bureau, and that his last illness was incurred by overwork in the discharge of his official duties. We think the claim is a meritorious one for these reasons, and we report an amendment, to follow the last word in the last line of the original amendment, in these words:

The said Joseph P. Smith having held a quasi diplomatic position and having incurred the disease of his last illness by overwork in the performance of his official duties.

The accompanying letter of the Secretary of State is hereby made a part of this report.

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DEPARTMENT OF STATE,  
*Washington, February 14, 1898.*

DEAR SENATOR DAVIS: I have your favor of the 11th instant, concerning the proposed appropriation for the late Joseph P. Smith. It is my belief that Mr. Smith came to his death as direct result of overwork in developing and pushing the labor of his Bureau. Mr. Smith entered upon his duties with the determination to benefit American trade and to aid its development in South America, and to this end he gave his time and labor day and night until he had undermined his constitution. I know Mrs. Smith to be a lady of high character and every way worthy of the proposed bounty.

I take pleasure in commending the measure to your favorable consideration.

Very respectfully, yours,

WILLIAM R. DAY.

Hon. C. K. DAVIS,  
*United States Senate.*

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[See pp. 791, 799.]

July 7, 1898.

[Senate Report No. 1411.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 3119) for the relief of Mary A. Swift, having had the same under consideration, beg leave to submit the following report:

This bill is now before the committee for the fourth time, and the views of the committee upon the subject are embraced in the report made from this committee by Mr. Cameron in the first session of the Fifty-fourth Congress, which was as follows:

[See Senate Report 1138, Fifty-fourth Congress, first session, p. 805.]

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#### FIFTY-SIXTH CONGRESS, FIRST SESSION.

[See p. 805.]

January 24, 1900.

[Senate Report No. 163.]

Mr. Davis, from the Committee on Foreign Relations, submitted the following report:

The Committee on Foreign Relations, to whom was referred the bill (S. 630) for the relief of Mrs. Harriet D. Newson, respectfully report

that said bill has been heretofore several times favorably reported from this committee, and submits as its report the one made by said committee in the first session of the Fifty-fourth Congress, as follows:

The late Maj. Thomas M. Newson, husband of the beneficiary under the bill, was, at the time of his death, March 30, 1893, consul of the United States and resident at Malaga, Spain. He was one of the pioneers of Minnesota, and for thirty years a leading editor at St. Paul, the capital of that State. During the civil war he bore a commission on the Union side, and acquitted himself with ability and gallantry, gaining promotion. He was a generous, unselfish man whose name is held in reverent regard particularly by his lifetime associates, the older residents of Minnesota. A characteristic of Major Newson through life was his unselfish devotion to the sick and suffering. This led to his death: for an attack of smallpox, which proved fatal, was incurred by the major in labors among the poor of Malaga during an epidemic of that disease. He paid with his life the penalty of philanthropy. His widow is left in delicate health, without means, with an invalid, incurable daughter who requires confinement in an infirmary, and with a delicate young daughter dependent on her mother. It is altogether a case which appeals in the strongest manner to sympathy and to Government aid in her behalf, to the furthest permissible extent.

This committee recommends the passage of this bill when amended as follows:

Insert after the word "Newson," in line 4, the words "or her lawful heirs."

Strike out section 2.

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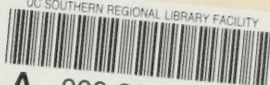








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